The impact of Unsettled Land Claim on Local Spatial Planning

A Case of Mount Frere: Umzimvubu Local Municipality

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Abstract

This thesis undertakes an in-depth study of the Mount Frere land claim. The study focuses on the impact of unsettled land claims in small rural towns of the former Bantustan on local spatial planning. There is no known evidence of similar studies done in small rural towns, therefore the study will contribute to the construction of body of knowledge.

The study takes a case study method to analyse the impact of unsettled land claims. The analysis provides a platform for drawing possible policy recommendations in respect of urban land claims in small rural towns of the former Bantustans. The thesis central argument is that the delay of settling the land claims in the small rural towns of the former Bantustans has a negative impact on the local spatial planning. The poor local spatial planning results in an uncoordinated development which constrains development in general. The study argues that the law as it stands does not clarify the role of local municipalities during the process of land claim. The study will further argue that land restoration may not always be the appropriate relief for the claimants in the case of urban land claims in small towns.

In the case of Mount Frere the municipality appears to have taken a confrontational approach towards the claimants as witnessed by the number of court cases opened against the claimants. This resulted on a breakdown of trust between the municipality and the claimants. The role of the land claims commission also appears to have contributed to the problems of delayed settlement of the claim. The municipality wants to oppose restoration but the municipality seems to be unaware of section 34 of the Restitution of Land Rights Act.

It is argued that there is little focus on the land claims in the rural small towns of the former Bantustans and as such this is retarding development and investment on infrastructure and local economic development. The delayed settlement has also made land invasion and illegal sale of land to be rampant and benefiting individuals and not all the claimants in the process.

Declaration

This Masters thesis was submitted as fulfilment of the requirement to complete a Master of Town and Regional Planning degree. The research was compiled and completed by Simphiwe Thobela, the author. All the sources that were consulted in the preparation of this thesis have accordingly been acknowledged and referenced. This thesis has not been submitted to any other university.

I further confirm that views that are expressed in this thesis are personal views of the author and are not reflections on all the parties interviewed in the process of compiling the thesis.

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List of Acronyms

ACLA	Advisory Commission on Land Allocations
ANC	African National Congress
CODESA	Convention for a Democratic South Africa
COLA	Commission on Land Allocations
DFA	Development Facilitation Act
DLA	Department of Land Affairs
FDI	Foreign Direct Investment
IDP	Integrated Development Plan
HHs	House Holds
LED	Local Economic Development
LUMS	Land Use Management System
MEC	Member of the Executive Council
NLCC	National Land Claims Commission
RDP	Reconstruction and Development Programme
RLCC	Regional land Claims Commission
SANT	South African Native Trust
SDF	Spatial Development Framework
SPP	Surplus People Project
TBVC	Transkei, BophutaTswana, Venda and Ciskei
TLC	Transitional Local Council
VMB	Village Management Board

1 Chapter 1: Introduction

1.1 Introduction

The thesis examines the tension between the unsettled land claims in urban areas in small rural towns of the former Bantustans and local spatial planning. The study will focus on Mount Frere, a small town in the former Transkei Bantustan in the north eastern end of the Eastern Cape Province in Umzimvubu local municipality (see map1). The thesis takes an in depth analysis of the case of Mount Frere land claim in order to evaluate the impact of the delays in resolving and settling land claims in local spatial planning. The thesis attempts to identify and analyse the policy and legislative gaps that this case study highlights. It appears that there is paucity of information in relation to the impact of the slow pace of settling land claims in the small towns of the former Bantustans, however a comparison to other urban land claims like in Cator Manor, District Six and Kipi land claims is made. Whilst there is paucity of literature regarding land restitution in the Bantustan towns, there is evidence that after 1994 democratic elections, there has been a concerted effort on land reform and urban reconstruction by scholars (Boyce: 2003). The study concludes by suggesting policy recommendations that would facilitate closer integration of restitution and local spatial planning.

The land issue in South Africa is a complex and vexed one. It is, most of the time a very emotional issue across the colour line (Ntsebeza and Hall: 2007). It is a source of inequality that has drawn the dividing line between black and white and it has produced a huge chasm of inequality (Boyce: 2003). The struggle for access to land and land rights has historically been the centre of the broader struggle for political, economic and social equality in South Africa (Boyce:2003). The democratic government that came in 1994 was expected to focus amongst other things, on land reform. Ntsebeza and Hall (2007), argue that the land reform question was painfully slow compared to other aspects of democratisation and transformation of the state.

Whilst there has been a number of issues that have been attended to by the democratic government, the land ownership patterns remain skewed in favour of the whites who are historical the colonisers who were aided by various legislation under the union government and later apartheid government (Andrew and Jacobs: 2008; Boyce: 2003; Dorsett: 1999). The laws and policies of the government then created a legal basis for land dispossession which resulted in forced removals of between 3,5 million and 4 million black people (Surplus People Project: 1983). The Reconstruction and Development Programme (RDP) which is a programme of the African National Congress (ANC) to redress the imbalances of the past due to colonial occupation and later apartheid, identified land reform as a major focus of the RDP. The ANC saw the land reform in general and restitution in particular as being central to the reconstruction programme (Dorsett: 1999). In fact, Drimie (2004), says the land reform programme is at the heart of the whole liberation struggle. Dorsett (1999) argues

that the a fundamental land redistribution is needed in South Africa and as such land reform must be driven by the state and not by the market forces. In the context of a state driven land reform, Ntsebeza (2003) says the state has a daunting task of redressing the chronic land shortage for the former Bantustans.

Most of the forced removals were in urban areas (Boyce: 2003). By 2004 most of land claims that were settled through financial compensation were claims in the urban areas (Hall: 2007). However, out of all the settled land claims in urban areas, it appears that the urban areas of the small towns in the former Bantustans were not counted amongst the settled urban land claims. The Group Areas Act no. 41 of 1950 was an act that had the greatest impact on forced removals in urban areas as part of the racial segregation of the apartheid government (Boyce: 2003). There is no known evidence of the impact of the Group Areas Act in the towns in the former Bantustans. The fact that whilst there were forced removals in the former Bantustans small towns, the complication is that there is no evidence to confirm that they were done on the basis of the Group Areas Act.

Amongst other things, Boyce (2003), noted that land dispossession in cities and consequent lack of access to land is evidenced by poor access to housing and mushrooming of informal settlements. Department of Land Affairs (DLA) further notes that the land hunger is also evidenced by illegal land occupations and informal trading in the central business district. This is indicative of a slow process of land restitution and redistribution which has resulted in people occupying in land illegally.

In the early 1990s the apartheid government had started to consider the land reform process. This was done by establishing the Advisory Commission on Land Allocation (ACLA) and later Commission on Land Allocations (COLA) to identify land for restitution purpose for the benefit of the victims of forced land removals (Khosa: 1994). However, there is no evidence that indicates that the apartheid government also intended to implement the land restitution programme in Bantustans. In fact, it could not be done, because technically the Bantustans were independent states that determined their own policies albeit many viewed them as an extension of the apartheid regime.

When the democratic government was ushered in through the democratic and non-racial elections in 1994, land reform was also at the centre stage of the government of national unity led by the ANC. One of the first laws to be enacted by the democratic government was the Restitution of Land Rights Act, no. 22 of 1994. This was a clear intention by the ANC led government to address the land disparities of the majority of South Africans who were blacks and Africans in particular. Boyce (2003), says the Restitution of Land Rights Act was a primary mechanism to effect restoration or alternative relief for land dispossession under apartheid. The Restitution of Land Rights Act also provided amongst other things the establishment of the Commission on the Restitution of Land Rights. The commission was established to investigate the injustices of forced removals and other forms of land dispossessions that were done under the colonial and apartheid rule. The commission

enjoyed legitimacy as it was established through legislation passed by a democratically elected parliament.

The process of lodging land claims was opened in terms of the Restitution of Land Rights Act, 22 of 1994 and the commission started to accept claims for the purpose of assessing them and investigate their validity. The cut off date for submission of land claims was set to be the 31st December 1998. According to the commission, a total 68,878 claims were lodged and registered.

Table 1.1 Number of Claims Lodged Nationally

Region	Number of claims lodged
Gauteng and the North West	15,843
KwaZulu-Natal	14,808
Western Cape	11,938
Eastern Cape	9,292
Mpumalanga	6,473
Northern Province (Limpopo)	5,809
Free State and Northern Cape	4,715
Total	**68,878**

(source: Commission on the Restitution of Land Rights Annual report 2000/2001)

The Restitution of Land Rights Act created a legal mechanism for the victims of land dispossession and forced removals to pursue their claims, the process remained very slow (Khosa: 1994; Walker: 1996; Ramballi: 1998 and Boyce: 2003). It appears that the pace of land restitution in the former Bantustans small towns had not been given priority as there is no available evidence of any of the lodged land claims in the small towns of the former Bantustans that were settled. The problems of systems and other related issues are usually challenges that are experienced by new organisations (Boyce: 2003). This thesis argues that the lack of adequate staff, lack of requisite skills and at times deliberate intentions to delay the completion of the claims by some employees for the fear of losing jobs. Some in the commission have argued that there has been a challenge of availability of information that would assist in the process of research of historical dispossession and forced removals. The commission has also claimed that there are difficult claims; these claims are the ones that have not been completed because of various issues which include contesting claims within the

same communities and disputes that are amongst the communities that have lodged claims. The annual report of the Restitution of Land Rights Commission (2005), states that the most difficult claims to settle are rural land claims. Whilst this may be true for the rest of the claims lodged, this thesis argues that the major delays have been experienced in the urban areas of the former Bantustans. According to NLCC annual report (2005), in the Eastern Cape most of the settled claims were in the urban areas, however there is no distinction between areas that were under the Bantustans (see table 2 below).

Table 1.2 Number of settled claims showing rural vs urban and financial commitment

PROVINCE	CLAIMS	RURAL	URBAN	HHs	BENEFICIARIES	TOTAL AWARDS
E CAPE	2981	10	2971	13681	35022	167,420,044.77
F STATE	72	4	68	772	2536	8,933,450.63
GAUTENG	3820	0	3820	3644	12728	274,473,160.00
KZN	167	164	3	4574	26882	353,147,835.35
MPLANGA	178	48	130	11472	34609	180,317,512.00
N WEST	1360	2	1358	2028	13170	107,976,830.00
N CAPE	467	0	467	464	2432	14,301,400.00
LIMPOPO	136	136	0	9323	63246	254,751,034.00
W CAPE	1453	0	1453	2482	6949	56,313,570.00
TOTAL	**10634**	**364**	**10270**	**48440**	**197574**	**1,417,634,836.75**

(source: Commission on the Restitution of Land Rights, Annual Report: 2004/05)

Whilst table 2 shows more settled land claims in the Eastern cape to be in the urban areas there has not been an impact in small towns of the former Transkei in terms of the claims settled. This thesis argues that whilst there is evidence of more land claims that have been settled in urban areas, those claims were not in the urban areas of the former Transkei. This necessitates more focus and research on reasons why there has not been a focus on settling claims in the urban areas of the former Bantustans.

This study analyses the case of Mount Frere Land Claim that has not been settled. Mount Frere is in the north eastern end of the Eastern Cape in the area that used to be Transkei from 1976 until 1994 democratic elections. The study will examine policy and legislative gaps in relation to the impact of the unsettled land claims on the local spatial planning. The local spatial planning is a responsibility of municipalities. As part of the intention of the study, researcher seeks to contribute to the body of knowledge and policy debate on the restitution on small towns in the former Bantustans and how it impacts on local spatial planning.

1.2 Background and current development scenario

Mount Frère is a small town in the north eastern end of the Eastern Cape in Umzimvubu Municipality (Map 1). Like many small towns in the former Transkei Bantustan, the commonage that was donated by the Minister of Land Affairs and Agriculture in 1997 (then Minister Derrick Hanekom) has since become a subject of a land claim by the people of Lubhacweni village, an adjacent area to the town of Mount Frere(Map2). The donation of the commonage to the Municipality, which was then a Transitional Local Authority (TLC), meant that the Municipality was the legal owner of the land referred to as Municipal Commonage (see map 2). In 1998 the community of Lubhacweni lodged a land claim in terms of the Restitution of Land Rights Act of 1994. It appears that the donation of the commonage and the subsequent land claim have led to conflicting interests between the Municipality and the community of Lubhacweni.

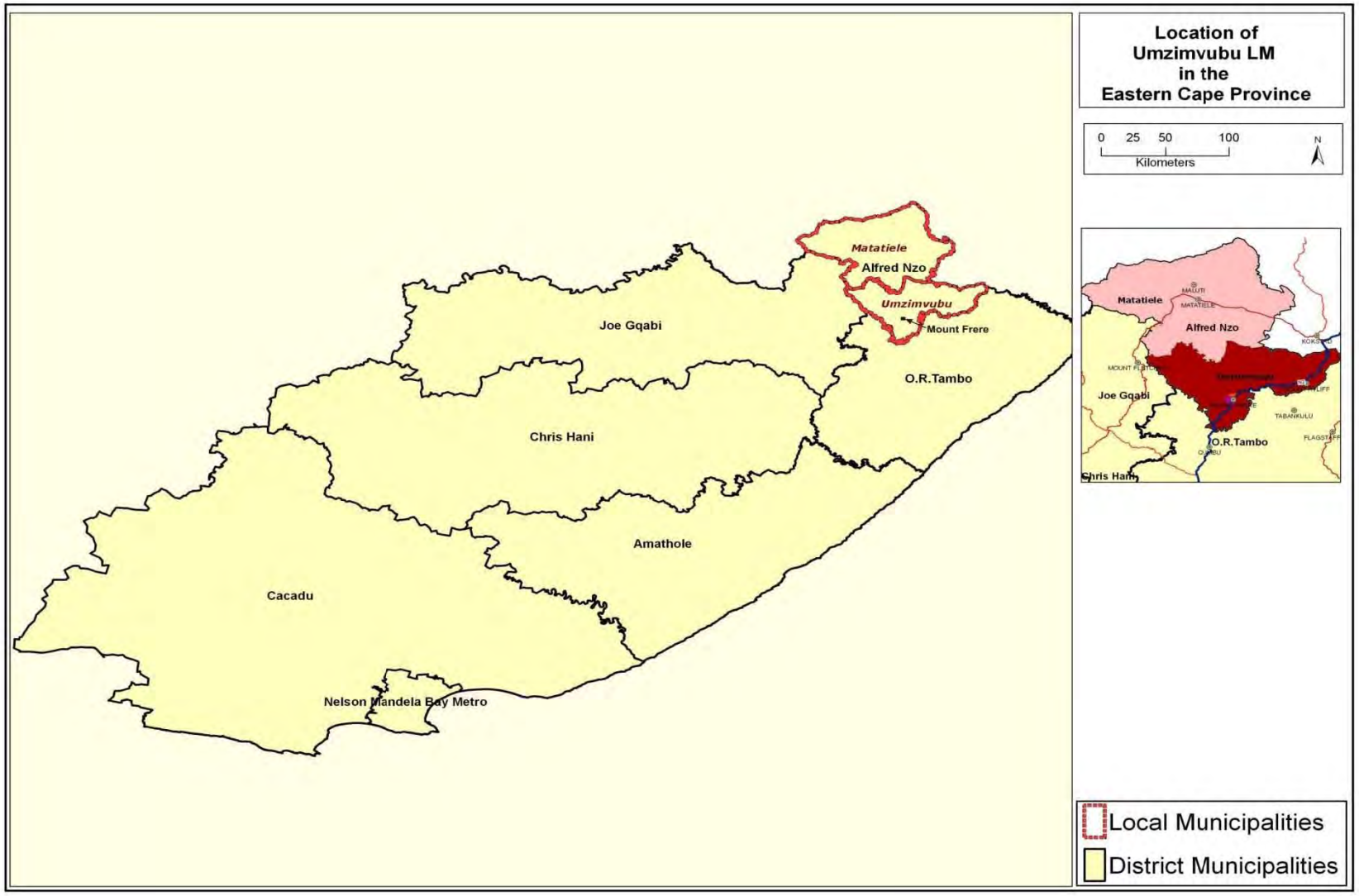
This study examines the impact of the Land Claim on Local Spatial Planning in Mount Frere and challenges that have been experienced by both the claimants and the Municipality of Umzimvubu. The Study covered the period between 1998 and 2007; however there will be a reference from time to time to the historic background dating from 1999 backwards. The research seeks to contribute in the body of knowledge in the settlement of land claims in small towns of former Bantustans. It also will contribute in policy recommendations for resolving similar claims in other small towns in the former Bantustans. The intention is to contribute to the understanding of challenges of Land Claims in small towns, especially in the former Bantustans.

Before 1994, the Municipality was known and understood to be owners and administrators of the commonage with no contestation. There is no available evidence of tensions between the Municipality and Lubhacweni before 1994 based on land ownership. It appears that tensions arose after the lodgement of the claim. The tension could also be an expression of contestation of land ownership as a result of slow Land Reform programme and slow pace of settling the land claim in particular.

Mount Frere became part of the Umzimvubu Municipality from the year 2000 after the Local Government elections. A new developmental local Government was ushered in creating wall-to-wall

Municipalities. The developmental local government is charged with the responsibility to prepare a Spatial Development Framework (SDF) and Local Economic Development plan for the entire municipal area of jurisdiction (Local Government White Paper, 1998; Municipal Systems Act of 2000; Municipal Planning and Performance Management Regulations (R 796: 2001) and the Constitution section 152 (1)(c)(1996)).

Map 1. Mount Frere in Umzimvubu Local Municipality of the Eastern Cape



The population has since grown in Mount Frere at an average of 5.5% (Umzimvubu Municipality LED strategy: 2006) on year to year. This has resulted in an increased pressure for the Municipality to provide housing; to create conducive environment for economic development and upgrade infrastructure. As a result of the population growth, there has been an escalation of demand for land. Because the municipality has not had an implementable spatial plan, there has also been an increase in land invasion and illegal land sales by claimants. The illegal sale and invasion by claimants has had a negative impact on enforcing local spatial planning. The study will examine the extent to which the Land Claim by Lubhacweni community hampered spatial planning in Mount Frere.

1.3 Rational of the study

Using the case study approach the thesis provides a detailed account of the Mount Frere land claim which is one of many land claims that remain unsettled and posing a huge challenge for local municipality in the process of local spatial planning. It has been noted that the municipality and the claimants have been in and out of courts with allegations of land invasion by the claimants and counter accusations by claimants against the municipality. Claimants have accused the municipality of continuing with developments without consulting the claimants and yet there has not been conclusion of the claim. Ramballi (1998) noted that in case of Cator Manor council viewed the restitution as a threat to the redevelopment efforts of the area. In the case of Mount Frere, the municipality has also complained about the spatial planning challenges as a result of the land claim. The municipality has also said that if the land claim was awarded in favour of the claimants through restoration, it would mean the municipality has no jurisdiction in terms of spatial planning because the land will belong to the traditional authority and land under traditional authority is not subject to the municipal ordinance laws. In the case of the Kipi Land Claim, Boyce (2003) sought to demonstrate the importance of negotiations over court processes. This study will, to a limited extent demonstrate the importance of negotiations over court processes. However, there has also been an allegation from the municipality that whilst there have been attempts to negotiate, the claimants and the tribal chief in particular has not been genuine.

Both Ramballi (1998) and Boyce (2003) who worked on the urban land claims in Cator Manor and Kipi land claims respectively focussed on negotiations between the claimants and the municipality and provisions of Section 34 of the Restitutions of Land Rights Act. Section 34 deals with a situation where national or provincial or local government may make an application to the land claims court for a piece of land that is subject to a land claim not to be restored or part thereof. In the case the Mount Frere claim, there is no evidence that is available that indicates that the municipality ever attempted to invoke the provisions of section 34. It appears that the municipal officials either are not aware or do not understand the provisions of Section 34 of the Act. The study will also look at the understanding

and capacity of the municipal officials to deal with the land restitution challenges and local spatial planning.

The thesis argues that there is a paucity of literature on the subject of land claims and their impact on local spatial planning. Ramballi (1998) also noted that most of the literature that is available on land reform in South Africa is focussing on rural areas. The study may refer to some existing body of knowledge on urban land restitution particularly the process of settling claims. Whilst the study will not be disputing that restoration is legitimate and appropriate strategy (Boyce: 2003); the study will argue that it is not always the appropriate remedy to restore land in urban land claims. This view will be supported by the impact of land claims on local spatial planning.

The central thesis of the dissertation is that the delayed settlement of land claims in small towns of the former Bantustans has contributed in the non-existence or poor local spatial planning. It further expose that municipalities are central in local spatial planning and the claimants may not always have the skill and understanding of the long term impact of poor planning of the town. The study will also evaluate the reasons for land invasions that are alleged to be perpetrated by the claimants. It will also show that the poor institutional ability of the Regional Land Claims Commission and the municipality has a negative impact in managing the land claim and local spatial planning.

It is argued that the municipality is the only institution that is well positioned to do local spatial planning and therefore capacity of the officials is equally important. Yean (1998), argued in the case of Singapore urban spatial planning, that it is important that land use is managed properly to maximise its use since land is a scarce resource. Community participation is also critical for a successful spatial planning as noted by Boyce (2003). This study also shows that part of the problem that is experienced in the local spatial planning is as a result of the apartheid planning legacy. The towns in the former Bantustan were never planned to accommodate a possible future growth hence congestion and tensions ensuing with increased urbanisation.

1.4 Laws and Policies governing Urban Development

Boyce (2003) correctly noted that since the advent of democracy there have been a lot of new laws that have been passed in relation to urban planning and local economic development. Recently, there has been an increased focus on the small towns of the former Bantustans by private property developers. Navigating through the new legislation and policy framework has proved to be difficult for municipal officials and developers alike.

Whilst the Development Facilitation Act 67 of 1995, was meant to facilitate and speed up developments, the former Transkei remained trapped in the old ordinance laws. The ordinance that is

applicable is the Township Ordinance 33 of 1934. It is surprising that there is still legislation from the colonial era. Donaldson (2000) correctly noted that the legislative framework inherited from the apartheid era is inappropriate for land development. Most of the legislation that was introduced intended to redress the injustice of the past in terms of access to land. It appears that most of the focus was in the big urban centres like Durban, Johannesburg, Cape Town and others. Boyce (2000) correctly noted that in the Bantustans the old legislation was still in force. There also has been a great confusion regarding planning legislation as there has been differences from province to province and also differences within the same province. In the Eastern Cape which is made up of the former Cape province, Ciskei and the Transkei, planning legislation is still varying according to the previous apartheid boundaries.

Some of the most important pieces of legislation that were enacted were the Development Facilitation Act, No. 67 of 1995, the Local Government Transitional Act, number 209 of 1993, Local Government Structures Act, number 117 of 1998 and the Local Government Systems Act, No. 32 of 2000. The systems Act in particular in chapter 5 deals with integrated development planning which emphasis community participation in the planning process. Section 26(e) of the Systems Act says that the Spatial Development Framework is a one of the core components of the IDP. The Systems Act introduced a different way of planning and access to land from the apartheid era. On the policy front, the Reconstruction and Development Programme (RDP) and the urban development framework fundamentally changed the planning regime (Boyce:2003).

The enactment of the new laws after the 1994 came with a lot of benefits for the majority of South African citizens who had been excluded from access to land and who were forcefully removed by the apartheid regime. Donaldson (2000) noted that often policies were developed without considering synergistic possibilities with other line functions. This has often lead to unnecessary turf wars (researcher's observation and experience) between government departments and across government spheres. To this end, Boyce (2003) concluded that there is a need for clarity of roles of local government in particular relating to restitution. The case of Mount Frere land claim is a typical example where local government seem to be unsure of its role in the process of land restitution. There is still a need to clarify the role of local government in restitution process particularly that it is local government that is expected to do local spatial planning.

1.5 Restitution and local spatial planning in Umzimvubu local municipality: Mount Frere

Development pressures combined with the scarcity of land in Mount Frere area has meant that the land restitution programme and the municipality that is responsible for local spatial planning and other service delivery expectations have come to direct competition for urban land. This has resulted in an unmanaged development which leads to a chaotic situation in the town.

The challenge of the municipality is to redress the imbalances of the past as a result of the apartheid and Bantustan regimes. Some families were removed in Mount Frere when the town was expanding; however there is no exact figures that have been found to ascertain the number of affected families. After the 1994 general elections, there has been a general and steady increase of the rate of urbanisation (Umzimvubu LED strategy: 2005)

It appears that the restitution and the local spatial planning by local government may be in conflict. On the one side the Restitution of Land Rights Act of 1994 read in conjunction with the Constitution of the republic looks at redressing the injustices of the past. This process provides for the victims of land dispossession and forced removals to seek relief and claim the return of their land rights or other form of relief (Boyce: 2003). On the other hand, the Local Government Systems Act of 2000 read bestows the right to do local spatial planning to the municipality. The Umzimvubu local municipality is the registered owner of the land under claim and as such still enjoys the land rights. The main challenge that the municipality is faced with is the ability to manage land use in a manner that takes to account that land is a scarce resource. Local spatial planning is the necessary tool to ensure that land use is managed better and efficiently. Since the gazetting of the Land Claim in Mt Frere, the Municipality has not been able to manage land use and administration due to the ambiguous nature of the land ownership after the Land Claim was gazetted. The study will later demonstrate that the Land Claim made it impossible for the Municipality to do Spatial Planning due to the Land Claim.

The restitution programme and local spatial planning tensions have to be managed effectively. The municipality sees the restitution programme as a threat to the local spatial planning as a there is a possibility of restoration of land to the claimants. The tensions are evident through the number of court cases that have been opened by the municipality against the Acting Headman of Lubhacweni and others (Case Numbers 845/2002; 1239/2005; 367/2005 and 368/2005). The court cases related to the land invasion allegedly incited by the Act Headman. The municipality has a possibility of making an application in terms of Section 24 of the Restitution of Land Rights Act. The researcher is also aware of the many other similar court cases in other small town of the former Transkei Bantustan including Mthatha which has a major development halted because claimants took the municipality to court over allegations of not consulting the claimants on a the proposed development. The unfortunate reality is that there seems to be no coherent strategy by both the Regional Land Claims Commission and the municipalities to deal with the tensions. Both the Municipality and the Commission seem to be acting on the basis of a ‚knee jerk reaction'.

1.6 Central Arguments and specific research questions

The central arguments made in this thesis are, first, the slow process of settling land claims in small towns of the former Bantustans affects the ability of the municipality to prepare and manage local spatial plans. The second argument is that there is a challenge which is a combination of two but separate issues; the first is that there is a lack of capacity and understanding of the importance of local spatial planning by the Municipality and the Commission. The second issues related to the second argument is that the policy framework is also not clear enough in terms of roles of different government spheres in particular local government where there is a land claim. The third argument is that restoration as part of land reform in small towns of the former Bantustans is not a preferred option of relief for land dispossession. The fourth argument is the confusion regarding the gazetting and the meaning of gazetting a claim has not been adequately clarified and as result claimants assume that land rights have been awarded to them once the claim as been gazetted. The last argument is that lack of local spatial plan will retard necessary local economic development.

Against the arguments sketched above, this study aims to answers to the following central questions:

- How has the unsettled land claim affected the Local Spatial Planning in Mount Frere?
- To what extent has the land claim affected Local Economic Development in Mt. frère?
- What is the role of the Municipality in local spatial planning where there is a land claim?
- How does the capacity of the Municipality affect local spatial planning in Mt. Frere?
- To what extent has the institutional capacity of the Regional Land Claims Commission affected the land claim in Mt. Frere?

1.7 Research Methodology

The study will take a Case Study approach based on Mt. Frere experience. Sources of data will be both from primary and secondary sources. Gillham (2000) defines a case study as a study that investigates either an individual, institution or community. He further says that whilst these units are in single cases they may also be on multiple cases. A case study seeks to answer specific research questions (Gillham: 2000). When conducting a case study research, it is important to note that the subject under investigation studied under a specific context (Gillham: 2000 and Yin: 2003).

The advantages of case study approach are that, firstly, the richness of the context may result in more variables than data points. Secondly, the study will not rely on single sources of information but

multiple sources of evidence (Yin: 2003). Thirdly, the case study allows the research to investigate a complex interaction between a phenomenon and its context (Gillham: 2000).

The case study approach seeks to understand a unit so as to understand the whole (de Vaus: 2001), therefore we seek to understand the impact of the land claim on Local Spatial Panning in Mt. Frere. This will contribute to theory building because of paucity of literature in land restitution in small towns (de Vaus: 2001).

The study also focuses on the Local Economic Development to examine how it is affected by the unsettled land claim. In the context of small towns, the research considered existing black businesses as they are the majority. Considering existing black businesses would include an overview of perception of owners of black businesses as to what impact has the land claim had over performance and growth of their businesses Other groups like the transport industry and taxis in particular, are an important target group.

1.7.1 Sources of Data

Data collection procedure will be purposive sampling targeting key respondents in different organisations and institutions. The following are data sources that will be consulted:

Primary sources of data

i. Interviews with various stakeholders in the restitution process of Mt Frere

ii. The key informants included the officials of the Regional Land Claims Commission of the Eastern Cape, Municipal Officials, and leadership of the Traditional Authority (claimants), political leaders, youth organisation, taxi owners, business association and councillors.

Secondary sources of data

I. Government reports; laws and government conferences and summits

iii. Newspaper articles

iv. National Land Claims Commission reports

v. Municipal meetings and community meetings

vi. Books and journals

1.7.2 Sampling procedure

Purposive sampling was preferred for the research because it is a technique that helps in selecting a number of key informants to respond to the research question but yield the most information about a particular phenomenon (Teddlie and Tashakkori: 2009). Purposive sampling was used as key role players in organisations and institutions were targeted as key informants.

The size of the sample was 19 key informants who have special knowledge about how they are affected by Local Spatial Planning. They were representing different interest groups and participants in the process of land restitution.

The table (1.3) below is listing key informants that were interviewed using the questions on table 1.3 below.

Table 1.3 List of key informants

Respondents	Designation/ affiliation	Institution
Land Administration officer	Former acting Town Clerk and current estates officer of Umzimvubu Municipality	Umzimvubu Municipality
3 Ward Councillors	Ward councillor of ward 18; 17 and 16 respectively	Public Representatives: councillors
2 Tribal authority members	Member of the Tribal authority and claimant	Traditional authority/claimants
1 Former members of tribal authority	Former member of the Tribal Authority turned business man	Former member of Traditional Authority/Community member
2 Business community leaders	Chairperson and secretary	Local Business chamber
2 Taxi operators and owners	Chairperson and secretary	Taxi Owners Association
2 Political leaders	ANC regional chairperson and regional secretary	Political Party
2 Regional Land Claims Commission staff members	Official of the RLCC responsible for Mt. Frere land claim	Regional Land Claims Commission
2 Youth leaders	Chairperson and secretary	Local Youth Council
2 Senior citizens of the community	Community members	Members of the community

It was relatively easy to have access to all the key informants that were identified for the research. The reason for the ease of access to the key informants is that the researcher had previously worked in the research area for almost six years interacting with most of the key informants. All key informants were very willing to participate in the research and without any fear and hesitation. The only

challenge that was experienced was access to the Municipal Manager of Umzimvubu Local Municipality. However, it did not have an impact on the study since the Municipal Manager was new in the municipality.

1.7.3 Instruments of data collection

Semi-structured interviews were designed with a list of thematic questions that were used on a specific context to a particular respondent or respondents on a particular theme (Welman et al: 2005).

The following are the questions that were focus areas of the interview in this study:

Table 1.4: Themes and question for interviews

Institution	Questions
Land Claims Commission	• Why is the land claim in Mt. Frere not yet settled? • What are problems that have been encountered in settling the claim? • What do you understand by the gazetted land claim? • What is the expected role of the Municipality before the land claim is settled? • Is the human resource capacity adequate to deliver on the presidential targets to settle land claims? • What are the necessary skills required for staff members in the commission? • Does the commission have staff with required skill to perform?
Local Municipality	• What are the challenges that have been faced by the local authority in Spatial Development? • To what extent does the land claim affect Spatial Development? • Has the land claim affected any Local Economic Development programmes and projects? • Has the Municipality suggested any solutions to the problem of the land claim? • Does the Municipality have staff members with skills to manage Spatial Development?
Traditional Authority	• What is the relationship between the Traditional Authority and the Municipality? • What role has the Municipality to play in Spatial Development? • What has caused delays to settle the land claim? • In what way is the RLCC assisting to settle the claim?
General public	• What is the impact of the land claim in the development of the town? • To what extent has the land claim negatively impacted on Local Economic Development? • Who is supposed to be responsible for Spatial Development?

1.8 Limitations of the study

The limitation of this research was the poor quality of reports from the Regional land Claims Commission. The poor quality of the reports may be due to lack of skilled personnel in the Regional Land Claims Commission. Moreover, there was also limited information regarding the Mount Frere historic forced land removals in the Regional Land Claims Commission. The poor quality of report was mitigated by information obtained from the key informants, particularly the Tribal Authority. One Municipal official also offered quite a lot of information which otherwise could have been obtained from the commission.

There is paucity of literature and research on the land claims in small towns of the former Bantustans. Urban land claims that have been settled are in metropolitan areas. However, comparison will be drawn between the Mt Frere claim and other urban Land Claims. Further, the researcher looked at similar studies in other African countries. In terms of the paucity of information and literature on the land restitution in small towns in former Bantustans, the researcher had to study other land restitution cases in Durban, Cato Manor and Cape Town District Six.

1.9 Structure of the report

The study is divided into seven chapters. The first chapter comprises of an introduction to the study, and methodology. In the second chapter the conceptual framework of the study; spatial planning and complexities of land restitution are discussed. The importance of land reform and economic development are highlighted.

The third chapter provides a historical background and literature review of the study by looking at an account and context of land dispossession in South Africa and legislation that was the basis of dispossession and forced removals. Urban land dispossession and control in small towns will be discussed. The chapter will also examine the role of Bantustan government role in enforcing land dispossession.

The fourth chapter will examine and look at the legislation and policies for land reform programmes of the apartheid government. This chapter will also review some documents including the White Paper on Land Reform.

In chapter five the democratic government and its policies on land Reform will be presented and a special focus will be given to the Land Restitution process and policies. This chapter will also include a critique of the Restitution of Land Rights Act and other related legislation. More focus will be given

to intergovernmental relations in fast tracking restitution in urban areas with the involvement of local government.

The restitution of Mt Frere will be analysed by reviewing interviews and documents in the sixth chapter. An attempt to provide a historic background of Mt. Frère, including the Land dispossession and what the community has done to deal with dispossession will be provided. The chapter will also include the views of the Traditional Authority of Mt. Frere that has lodged the claim on behalf of the community of Lubhacweni. Section eleven (11) and thirty four (34) of the Restitution of Land rights Act will also be assessed in view of Land invasion that has since taken place in the Land that is claimed.

The final chapter will be conclusions drawn from the study. Recommendations on how restitution and Local Spatial Development can be integrated will also be made on this final chapter.

Chapter 2: Conceptual Framework

2.1. Introduction

This chapter presents some of the concepts and theories within which the study is contextualized. A conceptual framework is understood as a set of coherent ideas and concepts that have been developed by others which form a basis of what the researcher thinks and how such ideas and concepts influence the research. The purpose of this section is to examine concepts and theories that have an impact in understanding the process of local spatial planning on land that has a land claim. Central to the study, is land claims and local spatial planning. Spatial planning has evolved from what had been known as town planning. Healey (1997: 08) argues that planning in the past century is rooted in the philosophical and social transformation, history of western thought (enlightenment). Healey further states that towards the end of the eighteenth century, an emphasis of science, philosophy and economics developed. Notwithstanding the history as read from Healey, Claassen (2009) argues that spatial planning is a derivative of town planning or town and regional planning. The other concept that is presented is the Local Economic Development as one of the important functions of spatial planning. There is a link between Economic Development and Spatial planning; the link is evident in the work by Robinson (2005). Robinson found that in encouraging rural communities in the northern Transkei to migrate to the urban areas, it had to be planned and a strategy be developed in terms of local spatial settings. As part of spatial planning in towns there were better opportunities for economic development, Robinson found. The Integrated Development Plan which is legislative requirement of municipalities in South Africa has also become an important long term planning tool. It is therefore imperative to examine the implications of local spatial planning to the IDP or the other way round.

2.2. Spatial Planning process

2.2.1. Understanding of the Spatial Planning process

Spatial Planning differs greatly from one country to another (Koresawa and Konvitz, 2001: 11; Arbiter, 2001: 95). They say whilst spatial planning differs from country to the other there are three fundamental functions of Spatial Planning; the first is that Spatial Planning is a process that „provides a long or medium-term strategy for territories in pursuit of common objectives, incorporating different perspectives of sectoral policies'. The second suggestion is that „Spatial Planning deals with land use and physical development as a distinct sector of government activity alongside transport, agriculture, environment and other issues'. And the last is that Spatial Planning „can also mean planning of sectoral policies according to different spatial scales'. Spatial Planning also refers to a process of

„dependence upon functionalist mode of explanation for changes which occur in the urban system' (Cooke: 1983). Spatial planning also forms part of strategic planning of local government in South Africa, however, strategic planning originated from the private sector in the 1950s (Albrecht's: 2001). Strategic Spatial Development Planning is defined as a process that:

- Is orientated towards decisions (Bryson: 1995)
- Actions (Faludi and Korthals: 1994)
- Implementation (Bryson and Roering:1989; Bryson: 1995)
- Results (Poister and Streib: 1999)
- The process is both short and medium-to-long term and it incorporates monitoring and evaluation; feedback and revision (Albrechts: 2001)

2.2.2. Importance of Local Spatial Planning process

The local state has a responsibility to change spatial inequalities that may be as a result of poor planning or no planning at all on one side or historical inequalities on the other(Tacoli: 2003). Local Spatial Planning is then a policy response to spatial inequalities (Albrechts: 1989). However the process of spatial planning must also be pro-active whilst engaged in redress of the past inequalities. Failure to put together a local Spatial Planning and other planning instruments would result in problems as experienced in Logos, Bogota, Tunis, Mexico City and other developing country cities in the world. These cities are experiencing high level of urbanisation, high levels of unemployment, land invasion, illegal subdivisions and unstructured growth (Ward: 1981; Lawless and Findlay: 1981; Ayeni: 1981). Local Spatial Planning process is also dependant on institutional capacity and ability to carry out the function. It is more than just a „mere focus' on land allocation but has to address the socio-economic issues in an integrated manner (Albrechts: 2001). The Local Spatial Planning is not a „neutral' process as Pluralists believe that Spatial Planning is a function of the state that is „neutral' and able to serve a variety of divergent interests (Adams: 1994). It is rather a process of „negotiations, bargaining and compromising on the distribution of land' in an attempt to mediate between conflicting claims on land and promote certain interests above the others (Adams: 1994).

Local Spatial Planning is a function of urban planning as an intervention in the development process (Adams: 1994). The Local Spatial Plan provides a context and strategies within which control decision are made by planning authority (in the case of Local government it is Local Municipalities). However, Adams (1994) argues that development control is passive and suggests that development promotion is the most appropriate way of defining interaction between urban planning and development. It may therefore be argued that Local Spatial Planning is such an instrument and

mechanism to control and promote development in the urban development process. According to Koresawa and Konvitz (2001: 11), in local government or municipalities, Spatial Planning is about land use planning to regulate land and property use.

2.2.3. International experiences of Spatial Panning

In Denmark, Finland and Norway, Spatial Planning is a accepted as a tool to cover both spatial strategy and land use planning; however, there is also an emphasis that is put on the importance of both regional planning and local planning (Koresawa and Konvitz, 2001). What is clear in the case of the three countries is that there is a great emphasis of the role of regional government in spatial planning though it has to be in consultation with local government. In Japan and Korea, the emphasis on Spatial Planning is on central government as a driver of the planning process. The spatial planning process in both countries seeks to ensure that there is efficient use of territorial resources; it in entails „optimizing' industrial and residential locations such that the welfare level of the nation can be increased. In Singapore, Spatial Planning emphasis sustainability by trying to arrest the runaway developments. This needed central government to have what they referred to as a Concept Plan (Wong, Yuen and Goldblum, 2008). The Netherlands has a similar structure of planning as Korea and Japan, where national government plays a major role in planning.

2.2.4. African experience of Spatial Planning

In Kenya, the nature of colonial urbanisation resulted in weak linkages between the urban centers and hinterland (Obudho and Aduwo, 1990: 52). The weakness of the linkage between the urban centers and hinterland has been recognised by the Kenyan government adopted a growth-pole approach in an attempt to address the relationship. From the work of Obudho and Aduwo (1990), it is found that the government sought to engage in Spatial Planning to ensure linkages between the small urban centres and hinterland. Obudho and Aduwo conclude that to change the relations between the urban centres and hinterland, there is a need for a bottom-up approach of planning. This implies that there is a need for collaborative planning which is discussed below. In the case of Botswana, the central government plays a central role in planning through the department of Regional and Town Planning (Silitshane, 1990). There is no evidence from the Silitshane's work, of public participation in the planning process. In the case of Nigeria, Egunjobi (1990) found that there is no linkage between the urban centres and the hinterland. in fact, he found that there is not even a planning conceptual framework; he further suggested that the Nigerian government should consider the Growth-Pole and Central Place approach to planning so as to have urban centres influence rural areas. One of the suggestions that

Egunjobi made was that the central government has to strengthen the local governments so as to undertake the planning process for the rural areas in particular.

2.2.5. Relevant spatial planning theories

2.2.5.1. Collaborative Planning theory

Collaborative planning theory is a planning theory which is inspired by works of Habermus. Amongst other issues, the theory was as response to what Healey (1998) says is policy analysis approach which is about planning spaces and not activities of people. Collaborative planning seeks to be inclusionary by encouraging negotiations within a context of many stakeholders. The „inclusionary argumentation' by Healey, is based on the assumption that decisions that are taken are cognizant of all members of the „political community' and an opportunity to participate in such decision process has been open. Healey (1997:237) further say, it is not enough to just participate in the decision making process but members of the community must have an opportunity to challenge decisions made on their behalf. As part of Collaborative planning, Healey (1997) argues for a pluralist form of governance.

2.2.5.2. Critique of the Collaborative Planning theory

Collaborative planning process is an ethical way of planning which ensures that all stakeholders' interests are represented in the process of decision making. However, there are challenges of competing agendas amongst groups. These competing interests may not be well managed and thereby having a negative impact to the whole planning process. Conflicts because of inter-group interests in the same domain may result in unnecessary delays in processes. An important question is whether the planner is adequately equipped to manage and resolve such tensions that arise due to competing interests? How do planners avoid turning the planning process to a chaotic platform that would not yield desired result? Healey (2007) critiqued the process of collaborative planning raising issues that may hinder the process of collaborative planning. Amongst the issues that Healey raised, are the Naiveté about power; whether representations on stakeholder platforms may be equal; where the planner has the power that sometimes is assumed to be inherent in planners? Watson (1998), concluded that some of the problems that were experienced in the case of Cape Town's Metropolitan Planning Forum due to community „gatekeeper'; inexperienced planners and political circumstances. Most importantly, is whether the stakeholders' representatives are indeed legitimate and whether stakeholders have access to information or not?

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2.3. Rural-Urban Linkages

There is also an important issue of linkages between rural and urban areas; Local Spatial Planning in urban areas is important for rural development (Ticoli: 2003). The urban centers are important to rural areas because rural areas depend on urban centre's for goods and services; in fact most of high Schools, hospitals and government offices are in urban centres(Tacoli: 2003). The empirical evidence to support the importance of Local Spatial Planning and linkages with rural areas is important for small towns. The significant of the linkages is emphasising the centrality of the importance of the role of the Local State in Local Spatial Planning.

2.3.1. Relevant theories to Rural-Urban linkages

2.3.1.1. Growth-Pole Theory in Spatial Planning

The Growth Centres theory is a theory that integrates a number of other theories that are explaining the geographic, economic and social development in a dynamic manner (Moseley: 1974). The study borrows some aspects of the Growth-pole theory. The aspect of linkage between the urban area and its hinterland is as important aspect for the study. Growth centre theory is a theory that used for spatial analysis. The theory helps to examine the channels by which ‚growth impulses' are transmitted from towns to their nodal regions. The theory is also used to examine the linkage between the towns and their hinterlands (Egunjobi: 1990 and Moseley: 1974). The urban centre has relatively developed infrastructure compared to the hinterland. The retail shops, banks, transport node and other services that are in the urban area are a testimony of the importance of the urban area to the hinterland. This is an important point in expressing the importance of viewing small towns as part of a region of which they serve as high service node. Robinson (2005) found that Spatial Planning in the Transkei and other Bantustans was as a result of the towns seen as areas of ‚marketing, production and service delivery; and residential alternative to living in homesteads in the tribal areas. The Planning Commission of Bangladesh (2010) argues that within the growth centre theory, attention must be given to development small towns as economic hubs for their respective regions and link with rural areas. This argument supports the view that the attention that must be paid to the small towns is with the understanding that this will also improve the rural villages close to the town (Satterthwaite and Tacoli: 2003). It appears that the planning commission of Bangladesh is arguing for much focus of resources and urban planning which would include local spatial planning as key for efficient land use and other resources. For the purpose of the study, the issue of local spatial planning for Mount Frere is important as it serves as a growth centre. Obudho and Aduwo (1990) noted that the Kenyan

government, for a long time never paid attention on the linkages between the rural areas and small to medium urban centres. They further noted that the government has since recognised the need to change the relationship between the rural and urban centres using the growth centre approach.

2.3.1.2. Critique of the Growth-Pole theory

There are doubts about the effectiveness of the growth centre theory approach in ensuring spatial and functional integration between the rural and urban centres. There are views that growth centre theory tends to focus on the urban centres only and thereby inducing migration from rural areas to urban centres. Migration to these urban centres results in pressure that is exerted on the infrastructure. Migration to the urban centres has amongst other things overtaken the planning process and thereby resulting in subserviced informal settlements. The informal settlements that are sprawling are an indication of failure of the local state to guide and anticipate developments, it may be argued. Obudho and Aduwo (1990) concluded that this does not imply the approach is not working but a balance has to found between development in rural areas and urban centre so as to reduce spatial disparities and reduce poverty. Lastly, the Growth-Pole theory is also criticized for its Top-Down approach to development. The trickledown effect that is suggested by the Growth-Pole theory has not worked as envisaged (Nelson, 1993).

2.3.1.3. Core-periphery and centre-periphery theory

Core-periphery and centre-periphery theories emphasis the economic importance of the centre or core or towns acting as a central place for towns (Chaudhuri, 2001, Fujita et al, 2001)). The theory argues that there is a hierarchy of towns that act has service nodes for retail, hospitals and banking. This theory emphasizes the importance of the town to the rural areas in the periphery. The research borrowed from the centre-periphery and core-periphery theories the importance of the town to the rural areas of the study area. According to one of the pioneers of the theory, Christaller, there are hierarchy of nodes that depend on thresholds of the population and services that may be offered. He makes an example of basic food stuffs like bread and milk that may be sold in the local shops within walking distance where population numbers are lower than the town and are far from the town.

2.3.1.4. Critique of the core-periphery and centre-periphery theory

It may not be denied that the towns are the high level service nodes that are important to the rural area. In the context of the rural areas in the former Transkei, where mobility is high between the towns and rural areas. The improved transport system and accessibility of the towns has made people, the researcher argues, to buy even basic food stuff in towns and consequently negatively affecting the rural shops. The theory does not explain a phenomenon of informal settlements that are around the town which affects spatial planning. It is not clear whether the people who come and settle in the informal settlements come for services or they come in-transit or in hope of getting better job opportunities. However, this is not the subject of this study hence there shall be no further engagement with informal settlements except as a reference to spatial planning or lack of it.

2.4. Local Economic Development

Local Economic Development is a pragmatic response to a visible need; the need is the reduction of poverty, creation of job opportunities and improving income levels of households (Cunningham and Meyer-Stamer: 2005). According to Blair (1995) and Wong (2001), Local Economic Development is about the improvement of resident's quality of life. Wong (2001), argues that land and spatial patens form part of variables to determine quality of life. The relationship between land reform is explained well by Lipton (2009: 12); he says land reform is not a goal by itself but rather it is means to address economic matters. There are three broad sets theories of Local Economic Development which are interrelated and sometimes are overlapping (Gomez and Helmsing, 2008). The first is a market driven theory which makes the firms the central object of analysis. The second set of theory recognises that different regions have different abilities and therefore would not be growing at the same rate. Consequently, some of the regions have a tendency of falling behind. In response to the uneven rate of development of regions, this set of theories focuses on mobilisation of local resources including small enterprises, Community Based Organisation and local government. The last set of theories focuses on role of civil society as opposed to depending on government or the markets.

All the three broad categories of Local Economic Development (LED) theories are relevant to the study to provide the context within which the process of spatial planning impacts on LED (Barberia and Biderman, 2010). This section on LED therefore focuses on the implication of spatial planning to Local Economic Development. Studies in Brazil show that there is a biased concentration of economic activities in the centre of the city/town. Importance of this is the role of the urban planners in urban planning and spatial planning in particular. From the work by Barberia and Biderman, they sited Puga (2000), who found that there is a link between policy decision by local government on spatial planning, infrastructure investment one side and Local Economic Development on the other. Several authors argue that the body of literature in LED is a blend of various disciplines that include

Geography, Urban Planning and Economics; in fact he argues there is no coherent dedicated „body of theory' for LED (Rowe, 2010 & Rogerson, 1999).

As part of conceptualisation of Local Economic Development, Meyer-Stamer (2005) work is considered. Mayer-Stamer proposed what he called the LED Hexagon in South Africa), the Hexagon has the following pillars:

a. Target group

b. Locational factors

c. Policy focus and synergy

d. Sustainability

e. Governance

f. Process management

Urban planning and Local Economic Development are closely related because the infrastructure that supports business development and location of space in the urban area is a function of planning intended to improve growth, retention and attracting new businesses (Cunningham and Meyer-Stamer: 2005; Barberia and Biderman, 2010). It is therefore important to understand the linkage between Planning and Local Economic Development……'Planning and proper LED is closely related' (Cunningham and Meyer-Stamer: 2005). The importance of spatial planning to Local Economic Development is that it also deals with „spatially uneven' development.

2.5. International experience on Land Reform

This section will look at international and local experiences in settling land claims.

2.5.1. International experience on Land reform and spatial development-post independence

Land restitution is a remedy of land dispossession that is generally slow (Gruber: 1993). Where the state is or was a dispossessing agent and the state still holds the land, it is then easier to restore to the previous owner(Gruber:1993). However, in the case of small rural towns of the former Transkei the state is the owner of the claimed land and claims are said to be difficult (RLCC: 2006). The pace of settling land claims is determined by institutional capacity of land restitution institutions of the state (Dorner: 1972).

The view of restoration as a form of settlement in urban areas is rather narrow as it does not take into account the public interest and forward planning particularly in urban land. In Kenya for an example, land restitution was generally slow and costly and it was undertaken in the context of national policy objectives and developments (McCarthy and Grant: 1993). In Zimbabwe a concept of Peri-Urban ruralisation is characterised by densification of the peri-urban areas and high levels of unemployment due to an apparent lack of Local Spatial Planning on areas with land claim (McCarthy and Grant: 1993).

The experiences above do not make an explicit account of land restitution in small rural towns where the state is the land owner and the community in the peri-urban area are the claimants. There is paucity of information on small towns in relation to restitution. Land claims in urban areas have an impact on Spatial Development in small rural towns and there is paucity of research on the subject (Ramballi: 1998; Boyce: 2003).

2.5.1.1. Asian land reform experiences-Chinese case

In China, the land reform was a very important part of the revolution (Zhang, 1997). The Chinese revolution was premised on what was introduced by Dr. Sun Yat-sen in 1894 as a main doctrine for the Republic Revolution to achieve a fair distribution of land-use rights such as pursuit for „land-to-Tiller' (Zhang, 1997). By 1953, all land had been confiscated from the landlords to the ownership of the state. The objective of state ownership of land was to ensure that exploitation would be eliminated and most importantly, ensure „effective allocation of land resources (Zhang, 1997 and Dekker, 2003). However, in 1952 a major land reform after the revolution resulted in confiscating land from the landlords to the private hands of the peasants (Lai, 1995 and Dekker, 2003). In the late 1970s to early 1980s, the Chinese government introduced a „farmland responsibility production system' (Zhang, 1997). By 1957 there was a further land reform which resulted in a „collective' land ownership and thereby abolishing private land ownership (Lai, 1995, Zhang, 1997, Dekker, 2003, Ding 2003 and Qian, 2008). The last land reform process in china entailed what has been referred to as „decollectivisation', which entails land allocation per household depending on the size of the household. This land reform sought to mix both the state control (socialist) and introduction of market mechanism in land administration and ownership (Zhang, 1997, Dekker, 2003, Ding, 2003 and Qian, 2008). The last important point is that in China land reform started in rural areas and encircled the cities and towns and final the land reform was also affected in urban areas (Zhang, 1997). There is also a recent move to allow local government to have an influence on land use policy as opposed central control by central government.

2.5.1.2. Land reform in Latin America and Central America

Dekker (2003) and Surplus People Project (1992), identify three different forms of land reform in the Latin America and that is, land reform that opened new developments, land reforms that were initiated by one regime and rolled back by its successor and land reforms that were incomplete due to internal strife or civil wars. In the Latin America, like anywhere else, land reform has been part of the general political strategy. The Frei regime introduced limited land reform by helping farmers with „medium sized farms' (Surplus People Project, 1992). The Frei regime was concerned with building a middle class by redistributing land in the hands of the few families who were of colonial decent to the farmers of „middle sized farms' (Surplus People Project, 1995). The government focused on expropriating land that was in excess of 80 hectors; however, the process was slow and supported of the Frei government got impatient and left the party to join an alternative party (Surplus People Project, 1995). There has been successive unstable governments that had an impact on land reform as land reform projects never got finalised due to regime changes and instability of governments (Dekker, 2003 and Surplus People Project, 1995).

In Mexico as well the land reform process followed a peoples revolution wherein a 4% of land owners controlled 667% of land (Bobrow-Strain, 2004). Once more there is evidence that the land reform process was slow in Chiapas because of instability of government, in fact the Bobrow-Strain (2004) says government wanted legitimacy through antagonising the population. The result of the slow pace of land reform led by the state was that between 1994 and 1998 there were wide spread land invasions by ordinary peasants who were getting impatient with government. They seized farms in certain municipalities; however, some of the peasants abandoned farms that they had occupied and were also claiming. The reason that peasants abandoned or gave up some of the farms was as a result of negotiations in the land reform process. The process of negotiating and purchasing of land was also led by the state. It appears that the state though not stable, had a critical role to play in the process of land reform.

In some countries of the Latin-America, like Argentina land inequalities remain unaddressed. In Brazil, land invasion and land reform are „complementing' each other in bringing the land to the poor (Lipton, 2009). Lipton (2009) argues that all the state attempts to collectivise the land ownership and subsequent decollectivise were not completed. He argues that in both Argentina and Brazil, large tracks of productive land are still in the hands of *„fincus'* who are the descendents of *„colons'*. In the final analysis, land reform in the Latin-America has been a mixture of success, incomplete land reform ventures and reversed gains because of change in governments. It may be concluded that land reform has generally been chaotic, though this may be a sweeping statement it expresses the confusion of land reform in Latin America.

2.5.1.3. Land reform in Africa

Land Reform in Africa has been undertaken by countries one after the other but succumbing to the pressures of „land law reviews' (Manji, 2006: 43). Manji also concludes that there is a need to examine the role of the state in the globalised world where there is a increasing role of the multilateral institutions in land reform. Lipton (2009) argues that the African governments have not helped the lot of Land reform projects because there has not been enough investment on agriculture as part of land reform. It appears that there has been a major focus on country side in terms of land reform. The limited government investment on infrastructure on land reform projects has made land reform to be slow and the failure to attract Foreign Direct Investment (FDI) has reflects the regions poor infrastructure (Dekker, 2003).

What is also evident is that land reform has largely been focusing on rural area as opposed to urban areas. Both Manji and Lipton seem to be critical of African governments on how they have handled Land Reform. Further, Dekker (2003: 91) argues that land reform in Africa is taking place in a small scale; instead governments are focussing on reviewing land tenure regimes. However, the land reform programme in Zimbabwe has been different and uncoordinated led by the so called „war veterans'. By July 2000, the Zimbabwean government had decided on „Fast Track' process of land reform (Human Rights Watch, 2002). The „Fast Track' programme sought to redistribute 3000 hectors held by „settlers' to the indigenous people of Zimbabwe. The process of land distribution was chaotic and unstructured and some Zimbabweans who supported the land reform programme had a problem with the manner in which government approached land reform (Human Rights Watch, 2002).

2.6. Land restitution in South African

Adams et al (2000), argue that the uncertainty of land tenure, a legacy of apartheid in the former Transkei; Bophuthatswana; Venda; and Ciskei (TBVC) states is the underlying cause of underdevelopment (Adams et al: 2000). Whilst this is true for communal land areas, it is also true for the urban areas in the TBVC states as well. This conclusion may be reached because land claims that are in towns have resulted in some important investments not successful (this will further be explained on the findings).

Land reform and restitution in the post colonial and post apartheid era has been one of the most important programmes of the state; many authors that include Cousins (1999), Levin and Weiner (1996), Hendricks (1990), Ntsebeza (1999 and 2003) have all contributed on the land reform research. The authors have all emphasised the importance of land restitution programmes and identified challenges of such land restitution programmes. However, none of them has examined land restitution programmes in small rural towns in the former homelands (TBVC states). A lot of

theoretical work has been developed in relation to agrarian land reform in rural land areas (Ramballi: 1998; Boyce: 2003). Both Ramballi and Boyce have researched Land restitution and development in large urban areas but there has not been a focus on the impact of land restitution on local spatial planning.

2.6.1. Land Claims progress in South Africa

The purpose of this section is to give a background of the claims that were lodged with the National Land Claims Commission. In South Africa, there were 68 878 claims that were lodge by 31st December 1998 of which 72% were lodged in respect of urban areas. By 2003 (NLCC annual report; 2003), of the 68 878 claims lodged 53% were settled but not yet disaggregated into rural or urban areas. This shows the slow pace of resolving land claims. Table 1.1. Below is an illustration of the progress of land claims settlement from 1996 to 2003. The information presented on the table below shows a slow progress in the overall land claims process nationally. However, there is not yet information for land claims that have been settled for the same period regarding urban land claims in small rural towns.

Table 2.1. Table of National Land Claims Settled from 1995 to 2003-South Africa

Financial Year	Successful Claims	Households	Beneficiaries	Hectares	Total Awards Cost
1996/1997	1	350	2100	2420	5,045,372.00
1997/1998	6	2589	14951	31108	15,568,746.00
1998/1999	34	569	2360	79391	2,988,577.10
1999/2000	3875	10100	61478	150949	155,045,907.00
2000/2001	8178	13777	83772	19358	321,526,061.00
2001/2002	17783	34860	167582	144111	994,168,313.25
2002/2003	6809	21416	111759	89573	402,717,408.17
Total	**36686**	**83661**	**444002**	**516910**	**1,897,060,384.52**

(Source: commission on the Restitution of Land Rights Annual Report 2002/2003)

Clearly, from the statistics available there has been a delay in settling land claims that are in the urban areas. The Restitution of Land Rights Act does not stipulate the turn-around time between lodging a claim and settlement. There has also been a continued postponement of the completion of the land claims; this has been evident by missing of deadlines said by the President of the Republic in 2005 and 2006 which were missed. It appears that the Regional Land Claims Commission has not assisted claimants that have lodged claims to developments including Local Spatial Planning. The research has

had a firsthand experience of developments that were stopped because the Regional Land Claims Commission officials advised the claimants to stop such developments. The extent to which this is a factor in delaying the settlement of the land claims was examined in this research.

There is still space to ask questions of whether or not the concept of chieftaincy in relation to land use and spatial planning is not romanticised to a point of ignoring the role of the democratic state (Hendricks: 1990)? The Regional Land Claims Commission is expecting Municipalities to provide institutional support to claimants once the land claim has been settled (NLCC report: 2003). The form of support that is expected from municipalities has not been clarified by the RLCC except to suggest that the claimants must be consulted whenever there are developments on the claimed land.

A major challenge has been the slow pace at which land claims are being settled by the land claims commission. The President has set deadlines to complete the land restitution process but they have been missed. The last deadline for the whole country was set to be at the end of 2005 (NLCC; 2003). South African land reform programme is not exceptional in its slow pace. Chatiza (2003) and Gruber (1993) found that the pace at which land reform is undertaken is proving to be slow across continents and countries. The slow process has been evident by the targets that have been missed by governments to complete land claims, in some cases there has been a complete reversal of the land reform programmes because of instability in governments as seen in Chile and other Latin American countries (Dekker, 2003 and Surplus People Project, 1995).

The National Land Claims Commission (2003) identified challenges that led to the commission (NLCC) not meeting targets. The summary below shows types of claims that the commission referred to as „difficult claims':

2.6.2. Delays in settling land claims in South Africa

In this section the focus will be given to what the National Land Claims Commission says are reasons for delayed settlement of land claims based on the 2003 annual report of the Commission. The intention is to understand challenges of unsettled land claims according to the Land Claims Commission. The National Land Claims Commission has encountered a number of challenges in its attempt to fast track the settlement of rural claims and these include the following: -

- Most of the rural claimants are illiterate and thus take time to produce the required documents. The construction of family trees, the recording of minutes and important resolutions become a serious problem.
  - Most of the land in the ex-homeland areas is unregistered and un-surveyed, and thus there are no titles/maps. This makes deeds as well as archival research more difficult.
  - Most rural claimants have problems producing the required copies of personal documents such as identity documents, death certificates, marriage certificates, affidavits etc.

- Family and community disputes take much longer to resolve.
- Infrastructure and communication problems make it difficult to access claimants and to hold meetings. Distances to be travelled and the condition of rural roads pose a challenge.
- Determination of the monetary value of the claim and the development projects to be linked to the restitution award
- The patriarchal nature of rural communities (however, the report does not indicate how is this factor).

(Source: NLCC challenges and achievements 2003)

It has been noticed that out of all the challenges that were identified by the National Land Claims Commission, there is no mention of legal framework making any contribution to the delays. The commission also does not provide any indication of the administrative capacity of the commission to meet the targets for restitution. Whilst there are administrative and systemic challenges, the major issue that remains slowing the pace of restitution is legalistic in nature (Boyce: 2003).

2.7. Policy and legal framework for Land Restitution in South Africa

Land claims are a result of land reform policies and legislation that was introduced after the democratic elections in 1994 in South Africa. The election took place at the backdrop of a painful history of forced removals and land dispossession which was premised on the infamous Group Areas Act No. 41 of 1950, of the Nationalist Party regime. The forced removals and resistance to urban land dispossession was a painful act which resulted in a lot of suffering and people were displaced (Boyce: 2003). The researcher argues that there is no available documented evidence in the case of Mount Frere of resistance to forced removal or dispossession.

Dorner (1972), McCarthy and Grant (1993), argue that policies and legislation that are intended to facilitate the land restitution programme seek to address the land ownership which is lopsided because of the colonial and apartheid history of the country. However, the land restitution programme does not have to address the issue of ownership as an end on its own but rather a means to the end. The ultimately intention is to deal with poverty, unemployment and economic development (Dorner: 1972; McCarthy and Grant). Therefore, a necessary policy and legislative framework has to be developed and implemented.

The democratic government repealed all the discriminatory laws and policies and enacted new laws; amongst laws that were enacted is the Development Facilitation Act of 1995; the Municipal Systems act of 2000; the Restitution of Land Rights Act of 1994 and others. However, the question is that; does the legislation and policy alone change the conditions of the landless and the poor? In fact, it may be argued that policy and legislation alone are not adequate to address the issues of land restitution (Ntsebeza: 2003 and Cousins: 1999). The role of the state in supporting the beneficiaries is

still important particularly at a local level as the Municipal Systems Act of 2000 in Chapter 5 gives a legal obligation of Integrate Development Planning to the Municipality. Inevitably, the state according to the South African legal framework still has to play a central role in development planning.

Chapter 3: Land Dispossession in South Africa

3.1. Introduction

This chapter shall look at history of land dispossession and legislation that was the basis of dispossession in South Africa. Urban land dispossession and forced removals will also be discussed so as to provide context under which Mount Frere land dispossession and or forced removals took place and subsequent land claims. The forced removals are viewed in the following discussions and analysis as part of a concerted programme by whites to alter land ownership as a primary and fundamental component of property relations in any society since it is essential for social existence (Marcus, 1991).

The history of land dispossessions in South Africa has three distinct eras that may be classified as colonial era before 1913; the white domination and post Anglo-Boer war from 1913 to 1948; the last era is the apartheid era of land dispossession under the Nationalist Party regime from 1949 onwards. The different eras of land dispossession were characterised by different forms of dispossession which either posed as creating a class of African farmers or wage labourers or humiliate Africans to a level of being treated in a subhuman manner (Ntsebeza: 2007). Further to other forms of land dispossession the apartheid system sought to ensure that „black South Africans' were deprived of economic benefit by managing distribution of economic activity (Lemon, 1995).

3.2. Conquest 1600-1910

The colonial era is understood as the period of the beginning of altering the ownership patterns based on deception and force (conquered without any treaty or agreement); this view is better expressed by an unknown observer in 1695 as reflected on by Classens (1991)...'this Peninsula ....the Dutch occupied under command and auspices of the great Van Riebeeck, and now hold from the natives on a just title of purchase and with the sanction of law, and the settlement grows greater day by day in burghers, farms and fortunes; but what the just purchase price was that passed between them the sellers do not know, and the purchasers are averse to stating'. From the excerpt above is an illustration of how the colonisers robbed the natives of their land using deceptive means and force to dispossess them of their land and live stock and thereby proletarising the natives (Classens, 1991).

The Cape Peninsula was just an entry point to wide ranging programmes to dispossess natives of their land. In some cases land was taken through agreements between the governors of the colonial rule and illiterate chiefs (Classens, 1991). Dispossession through agreements is well illustrated in the following except...' They strongly insisted that we had been appropriating more and more of their land which had been theirs all these centuries… They asked if they would be allowed to do such a thing supposing they went to Holland, and they added: „It would be of little consequence if you people stayed at the fort, but you come right into the interior and select the best land for yourselves …' – Jan

van Riebeeck (Morris, 2004). This excerpt is from Jan van Riebeeck diaries and gives an account of the so called peace talks in 1660 in the Cape Peninsula with the Khoikhoi people. The peace talks brought to the end the first Dutch-Khoikhoi war in the Cape. The Dutch-Khoikhoi war was the first of many wars that the colonial settlers waged against the indigenous people in quest to dispossess them of their land that they had lived, used and produced on for many centuries (Morris: 2004). In the 1800s the settlers had progressed from the tip of the African continent that was used by Europeans as a half way stop to inland, to Orange River in the north and Kieskamma River in the east (Feinstein, 2005). The Khoikhoi people were largely displaced at this time and AmaXhosa were also amongst the first to be affected (www.sahistory.org.za). The indigenous people resisted the advancing colonial powers as it would be seen in the frontier wars. Resistance was ruthlessly crushed - initially by armed commandos comprising European farmers, slaves and African vassals and later, from 1811, by the British army which launched the first of several military attacks on the AmaXhosa across the eastern frontier. The end result was always the same – indigenous people lost their land and livestock and with this, their livelihood (www.sahistory.org.za).

The progress of colonialism took different forms at different times as it progressed from the Cape to inland of South Africa; one such most used form was missionaries (Classens: 1991). The other form that was used was the mineral concessions as colonisers discovered minerals like Gold, Diamonds and others. A typical example of missionaries that got land by misleading chiefs is how John Moffat's son misled Lobengula, Mzilikazi's son into signing the Rudd concession which would later pave the way for C J Rhodes to acquire the whole country which was later to be called Rhodesia (Classens: 1991).

Forced removals throughout South Africa were intended by the colonisers to redraw the geography of apartheid. This reconfiguration of the South African land based on white domination is clearly illustrated by Classens (1991); on the aftermath of the Anglo-Boer war the colonial power under the union enacted the Land Act in 1913 that legalised the deprive of Africans and blacks in general of access to land which was outside the 7% that was set aside for them. However, as noted by Classens (1991), African continued to be very competitive in the land markets despite the setback of the initial conquest, dispossessions and the final abolition of their property rights in 1913. According to Classens (1991), there is evidence of the quest for land by Africans and blacks in general as seen just after the Anglo-Boer war that many whites were divested by war had to sell land and Africans were able to offer better purchase prices compared to Europeans. The Pietersburg court noted and eloquently explained the ability and quest to acquire land by the blacks, the magistrate put it as follows: „ I would call then big agriculturalist, they go for fairly large lands – in a primitive method, of course. They are also the biggest cattle owners in the district. I should say possibly 90 per cent of the big and small stock is owned by the natives in the district at the present time' (Classens, 1991). This brutal and dishonest land dispossession is further illustrated by Feinstein (2005); the white

colonial settlers acquired land by force or exchanging land and cattle for tokens that had value that is close to nothing.

The aggression, deception, dishonesty and progressive land dispossession of the natives characterised the era between 1652 and the period of the Anglo-Boer war. It is the period in which natives lost vast tracks of productive land to the colonisers whilst they were simultaneously impoverished and relegated to being labourers in their own land.

3.3. Era of control 1910-1948

During this era which was just after the end of the Anglo-Boer war and the formation of the union of South Africa, the land dispossession was to be institutionalised and be legislated. However, the legislation of the land dispossessions was not new as there was the Glen Grey Act in 1894 to do away with Communal land rights which were enjoyed by the natives. „By introducing limited individual tenure it was hoped that Africans could be forced to become less independent in relation to their participation in the colonial cash economy. The result was that thousands of poorer African peasants were forced off the land. In addition to pushing Africans off the land, much was done to undermine the chieftain system of traditional African society as these tribal authorities acted as an independent political pole, which resisted these changes „(www.sahistory.org.za).

In 1913, the Native Land Act was promulgated; the key features of the act were the following (Native Land Act 27, 1913):

a) The creation of a number of African „reserves' for settlement of Black South Africans , which would serve as pools of labour for white owned farms and urban based industries.
b) The elimination of independent tenancy in „White' rural areas, with the abolition of sharecropping and rental tenancy arrangements.

The effects of the act meant that white population that was one and half million had access to and owned more that 90 per cent of land whilst African population of five and half million were allotted less than 10 per cent of the land (Meli: 1989; Ntsebeza and Hall: 2007). The impact of the 1913 Land act was devastating for the natives; interestingly some farmers were opposed to the law particularly in the Transvaal, they did not want the natives evicted to the reserves but rather evicted and be redistributed as farm labourers.

Plaatjie (1916) described the impact of the Native Land Act of 1913 as follows: "The baas has exacted from him the services of himself, his wife and his oxen, for wages of 30 shilling a month, whereas Kgobadi had been making over £100 a year, besides retaining the services of his wife and of his cattle for himself. When he refused the extortionate terms, the baas retaliated with a Dutch note, dated the

30th day of June 1913, which ordered him to „betake himself from the farm' of the undersigned, by sunset of the same day, failing which his stock would be seized and impounded, and himself handed over to the authorities for trespassing on the farm." Undoubtedly, the Natives Land Act of 1913 was used to intimidate and impoverish the natives as noted on Plaatjie's (1916) views on how natives were dispossessed of their livelihoods and land.

By the time the Native Land Act was enacted in 1913, the Natives Congress had just been formed in 1912 seeking to protest the injustice that was meted at the natives; Natives sought to peacefully protest to the authorities against the unjust laws and subsequent treatment. However, all that protest did not yield any results; in fact the natives wrote to Lord Gladstone asking him to withhold the enactment of the Natives Land Bill but all in vein (Plaatjie: 1916). The enactment of the Native Land Act in 1913 led to the natives finding means and ways of expressing their discontent albeit in a non-violent manner; there were songs that were composed that were a cry for land (Classens, 1991, www.sahistory.org.za):

We are children of Africa
We cry for our land
Zulu, Xhosa, Sotho
Zulu, Xhosa, Sotho unite
We are mad over the Land Act
A terrible law that allows sojourners
To deny us our land
Crying that we the people
Should pay to get our land back
We cry for the children of our fathers
Who roam around the world without a home
Even in the land of their forefathers.

The Union of South Africa at this time was progressing with introduction of repressive laws that were targeting to further disenchant the natives. In 1927 a Natives Administration Act was introduced which brought about pass „laws' so as to control African labourers and their movements. The Native Administrative Act of 1927 was to be a foundation for forced removals that were carried out by the subsequent Apartheid government. Further to the Natives Administrative Act was the introduction of the Natives Urban Areas Amendment Act in 1930.

In 1936 the Natives Trust and Land Act was passed by the Union of South Africa which effectively gave legal basis of evicting natives that resided on the white owned land unless they had a written permit. It also ensured that reserves for black labour are expanded. The promulgation of the Natives Trust and Land Act increased land for reserves to 13.5% which was primarily located in the Eastern

half of the country (Beck: 2000). By this time white farmers and miners had already occupied prime land for the exclusive whites benefit with blacks as labourers (Beck: 2000). Interestingly, Transkei which is the area where the study case is located was the only big chunk of land that was set aside for exclusively Africans (Beck: 2000). The Natives Administration Act of 1927 gave the British Governor General of South Africa an unlimited power to relocate tribes, determine tribal boundaries, and appoint chiefs. Effectively, the Governor General assumed a position of a Paramount chief of all Africans (Beck: 2000). These laws effectively ensured that land dispossession continued unabated.

3.4. The Apartheid years from 1948 to the 1990s and urban land dispossession

The well documented land dispossessions are the historic District Six, Sophiatown and Cato Manor. The well documented land dispossession and forced removal cases are in the three large urban centres in South Africa in Cape Town, Johannesburg and Durban respectively. There were others that were also carried out by the state for an example, East Bank in East London; Marabastad in Pretoria; South End/Fairview in Port Elizabeth. The urban dispossessions were premised on what Foucault (1984) eloquently put as….'space is fundamental in exercise of power' (Hook and Vrdoljak: 2006). The apartheid regime was forging ahead with land dispossessions under a legal pretext.

The Group Areas Act of 1950 which was later „improved' in 1966 was the continued basis for racial discrimination which allowed government to „legally' remove Africans from their residential areas that were designated for whites by the Nationalist Party government. The Government argued that the Group Areas Act would result in „racial harmony' (Dorsett: 1999). The Group Areas Act was implemented alongside another of the plethora of apartheid legislation, the Community Development Act of 1955. The Community Development Act led to the establishment of the Community Development Board; the Slums Act and Prevention of Illegal Squatting Act. The Community Development Board was set to dispose land that was owned by disqualified persons and also develop new areas into which such people would be moved (Dorsett: 1999).

The apartheid government started a half hearted land reform program in 1990 through the Advisory Committee on Land Allocations (ACLA) and the Commission on Land Allocations (COLA). At the time of the beginning of the apartheid land reform there were already signs of change heralding the coming of the democratic South Africa. Indeed, at the time of the negotiations for the democratic South Africa, land was one of the key issues at the negotiations. In fact, Levin and Weiner (1996) had this to say about the land question...'a decisive transformation of land and agrarian relations is thus intimately bound up with the construction of the new democratic order in South Africa'.

Chapter 4: Land Reform Policies and Legislation under Apartheid and the Introduction of the White Paper on Land Reform

4.1. Introduction

This chapter will review policies and legislation that were introduced by the apartheid government for the purpose of land reform and later will look at the policies that were introduced by the democratic government to redress the land ownership distortions that were created by the apartheid government. The chapter will also look into institutional mechanism that was created to handle the land reform programme and land claims in particular.

Land reform according to Aliber (2003: 38), has four issues that are key components of empowerment. The following are the four core components:

- It restores land to people from whom it was stolen;
- It gives people a permanent place to stay;
- It helps people to increase enjoyment or benefit they derive from the land to which they already have access; and
- It provides people with land-based economic opportunities

Land Reform is imperative because of the historical circumstances particularly in countries in Southern Africa like South Africa, Zimbabwe and Namibia (Drimie and Aliber 2003: 2).

Land reform and related policies in South Africa are supposed to address the following three (3) central areas that are important.

i. Land restitution to victims of forced removals
ii. Land tenure reform to promote security of tenure for all, and
iii. Land redistribution to the historically disadvantaged and landless people

Land reform is generally viewed as a process of redress of the past injustices that were largely through conflict orchestrated by the colonial masters and later the apartheid regime (Drimie and Aliber 2008: 2*)*. However, in the case of land reform in rural municipalities in the former Bantustans the process is not as easy as taking land from the whites who violently and unjustly dispossessed the indigenous Africans. Most of the municipalities in the former Transkei Bantustans are lead by Indigenous

Africans. Consequently, the process of land redress would not be simply taking land from whites to African indigenous communities.

4.2. Apartheid Legislation in relation to land reform

After the 1913 Land Act, in 1936 the Union of South Africa government passed a further law, the Native Trust and Land Act that sought to progressively exclude Africans from any benefits that may be derived from land in the areas that were seized by the white minority (Harley and Fotheringham 1999: 21). This Act sought to ensure segregation and increase of reserve labour in black areas. The 1936 Native Trust and Land Act added more land to the scheduled reserves of the 1913 Land Act. The Act saw addition of 6, 2 million hectors to the reserves which led to an increase of land from 7% to 13%. The 1936 Act also led to the formation of the South African Native Trust (SANT) which was used as a vehicle to acquire land for settlement by Africans (Harley and Fotheringham 1999: 22)

The Group Areas Act of 1950 was one of the initial pieces of legislation that was introduced by the Apartheid government in an attempt to ensure that „prime' land was reserved for whites only. The Act forced people to be grouped in terms of racial groups to live together in a designated area for such a group. The Group Areas Act not only looked at the race but also went to ensure that people are grouped in terms of their ethnicity. This law was implemented in 1954, it is this period that the apartheid government started to institute forced land removals. A good example is the forced removal of coloured people who lived in District Six in Cape Town. In fact, Andrews and Jacobs (2008: 5) say...'the vigorous capitalism of South Africa's commercial agricultural sector thrived on the basis of forced removals of original occupants to Bantustans and ability to super-exploit a vast supply of African labour...'. In 1951, the apartheid government passed the Prevention of Illegal Squatting Act, this act was meant to give power to the Minister of Native Affairs to remove blacks form public or privately owned land to make way for settlements. This act also made it impossible for those who were removed to appeal to any court, instead the law provided that the displaced persons be put into camps in places identified by government.

In 1959 the promotion of the Bantu Self-Government Act was passed. The Act ensured that Africans were not represented in the South African Parliament, but rather they were encouraged to form their governments in Bantustans on the basis of ethnicity. The units of self government were intended to develop further to independent states. In 1948 the Union government established a Tomlinson Commission to...'devise a scheme for the rehabilitation of the native areas with a view to developing within them a social structure in keeping with the culture of the native based on the effective socio-

economic planning' (Harrison 1981: 177). The Tomlinson Commission amongst other things made a point that the planned Bantu Self-Governments was unlikely to be economically viable. The Nationalist Party government neglected the Tomlinson Commission recommendations of development of infrastructure, focusing on economic development. As seen in the Piet Koornhof excerpt from the Tomlinson report, the neglect was deliberate because if the Bantustans were developed there wouldn't have been readily available labour for the whites to exploit (Harley and Fotheringham 1999: 33).

The struggle for freedom in South Africa intensified in the early 1980s; as a result the apartheid government was forced to make some concessions on the overall apartheid policy (Harley and Fotheringham 1999: 91*)*. At this time the struggle against apartheid and Bantustan policy also included resistance against forced removals which were central in the struggle. The concessions by the apartheid government on land reform were made as witnessed by the statement that was made by Minister Piet Koornhof in 1981. He said there would no longer be forced removals. Subsequently, in 1982 a government circular was issued that said removals would be on the basis of ‚persuasion' (Harley and Fotheringham 1999: 91). In the following years Koornhof said removals were carried out in a humanly possible manner and such removals were for development purposes (Harley and Fotheringham 1999: 91). Finally, in 1985, the Minister of Cooperation and Development, Gerrit Viljoen announced that there would no longer be forced removals and the resettlement programme would be reviewed *(*Harley and Fotheringham 1999: 91).

4.3. Apartheid Government policies of land reform: 1980-1994

In the late 1980s to 1991 the apartheid regime had been forced to make some land reforms because of the economic and political pressures that were exerted both internally and by the international community (Philpott and Butler 2004: 6). By 1991 the Nationalist Party government introduced legislation that had limited land reforms; this was done by introducing a White Paper on Land Reform. However, the White Paper rejected the notion of Restitution of Land Rights but opened up a limited redistribution based on market mechanisms (Philpott and Butler 2004: 6*)*. Later in 1991, the apartheid regime promulgated the abolishing of Racially Based Land Measures Act which repealed the 1913 and 1936 Land Acts (Philpott and Butler 2004: 6). Once the Racially Based Land Acts were abolished there was an introduction of Advisory Commission on Land Allocations (ACLA).

The introduction of the ALCA made it possible to introduce limited land reforms; these land reforms were marred by challenges of the pace and commitment of such programmes of land reform. ACLA

had a number of challenges that included the fact that it was established by a government that was viewed as illegitimate (Gelderblom and Kok 1994: 222). One of the challenges of ACLA, other than being a body created by a government that was illegitimate, was that the ACLA was just a body that took decisions unilaterally (AFRA, 1992). The ANC never viewed ACLA as a solution but as a transitional measure. In 1992 a working group set up by the ANC started a process to consider a „desirability, feasibility and possible design of the land claims court' (Levin and Weiner 1997: 242).

As part of land reform the Apartheid Government under FW De Klerk embarked on privatisation of state owned land. The privatisation of state owned land included privatising land in Bantustans (Levin and Weiner 1997: 240). According to Levin and Weiner (1997), a total of 2 million hectors of land that was due to be incorporated into the Bantustans was going to remain part of South Africa and be leased or sold to Black Farmers. This lead to a sharp reaction from the National Land Committee and the ANC's National Land Commission and a moratorium on state land sales was demanded. The De Klerk regime continued to privatise state land until the National General Elections in 1994.

The importance of the historic background of the early 1990s is that there is a general view that the apartheid government tried land reform. It appears that though the Racial Based legislation had been abolished and the Advisory Committee on Land Allocations had been established, the best it achieved was privatising state land instead of addressing key issues of restitution, redistribution and tenure reforms. The land reform principles as derived in the Land Reform White Paper of 1991 were mainly:

i. Access to land was a basic human right and
ii. Free enterprise and private ownership were appropriate mechanism to give effect to this right (Mostert, 2002).

The Bantustans were also affected by the privatisation process of the early 1990s. During the transitional period and during negotiations, the ANC ensured that land reform and restitution in particular, is raised to the top of the agenda for the democratic government (Walker 2008: 50). However, Walker (2005) argues that a number of communities benefited from the programme of the ACLA as they were restored to their land that was disposed.

The real land reform started in 1994 when a new democratic government was voted in under the leadership of the African National Congress and Nelson Mandela as the first democratically elected and black president. The land question was amongst the first priorities of the democratic government. The ANC had earlier produced two important documents; the first was a ready to govern and the next a Reconstruction and Development Programme which was also used as the manifesto of the ANC in the build up to the first democratic national general elections. In both documents land reform was amongst the most important issues to be dealt with by the ANC government. The ready to govern

document makes a statement about the intention of the ANC to embark on a fundamental land reform process, it says...'It is the ANC's view that the legacy of forced removals and dispossession must be addressed as a fundamental point of departure to any future land policy for our country. Effective measures to ensure that landless people gain access to land on fair terms, and a legal process to resolve competing claims to land, will be introduced by an ANC government as a matter of priority' (Ready to Govern 1992: 21*)*.

The ANC also appreciated the fact that land redistribution in the Bantustans is also necessary to address under-development and „land hunger'. The ANC went on to say...'Other land to be made available for redistribution in the towns, countryside and Bantustans should include:

- Land held for speculation;
- Underutilised land or unused land with a productive potential;
- Land which is being degraded;
- Hopelessly indebted land. (Ready to govern 1992: 22)

However, it appears that there was no immediate understanding of the extent of the problem of land reform in small towns of the former Bantustans and how it would affect development or local spatial planning in the small towns in the former Bantustan. There was no acknowledgement of the fact that forced land removals had also taken place in the Bantustans. The focus on forced land removals was either in the periphery of big cities and on land that had high potential for commercial farming or on land with mineral deposits.

The Reconstruction and Development Plan (RDP) of the ANC which was a basic policy document for campaigning in 1994 identifies land reform as one of the key issues that the democratic government would have to address (www.anc.org.za/rdp). The RDP further suggests that a comprehensive policy be developed in line with the RDP; the RDP document says „Land is the most basic need for rural dwellers. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. In addition, capital-intensive agricultural policies led to the large-scale eviction of farm dwellers from their land and homes. The abolition of the Land Acts cannot redress inequities in land distribution. Only a tiny minority of black people can afford land on the free market (RDP, 1994)'. From the expression in the RDP policy document as adopted by the ANC, it is clear that land reform was and is indeed a priority in terms of policy formulation process.

The subsequent Restitution of Land Rights Policy of the ANC (1994), points out that the new democratic government would have to enact a law that would enable government to affect land reform. According to the policy, there are four areas that the proposed law would have to address viz.

- The Right to Restitution
- Limitation of Land Claims
- Establishment of a commission on Restitution of Land Rights
- Land Claims Court

Effectively, the establishment of the Commission of Restitution of Land Rights would abolish the Land Allocation Commission. The National Land Claims Commission was established in terms of Restitution of Land Rights Act 22 of 1994.

4.4. Legislation that supported land reform

In 1990 Nelson Mandela was released from prison following the 1989 release of other prominent leaders of the ANC including Walter Sisulu. The ANC had just been unbanned and therefore back in the country legally. The negotiations had also started towards the end of 1991 albeit with difficulties as the second round of discussions had collapsed in 1992. The discussions were presided over by Court Judges and were called Convention for a Democratic South Africa (CODESA). This period was generally referred to as a transitional period.

The political events of the 1990s formed a basis of the National Party Government to introduce limited land reforms. There had been international pressure for the De Klerk regime to meaningfully begin a process to transform South Africa to a democratic state. The transformation process included reviewing legislation that was discriminatory, including land related legislation. The De Klerk regime had to, therefore, review all the apartheid legislation that was discriminatory. As indicated earlier, this most important and devastating legislation that gave effect to land dispossession of black people was the 1913 Land Act and the 1936 Natives Trust and Land Act 18. The De Klerk regime promulgated in 1991 the Abolishing of Racial Based Land Measures Act, the Upgrading of Land Tenure Rights Act and Less Formal Township Establishment Act (Mostert 2002: 405). Subsequently, all the racially based laws were repealed wholly or partially to encourage decentralising of control measures. The regulations and proclamations that were made under the repealed laws remained in force. This is an illustration of how limited the Land Reforms were under Apartheid government even at the dawn of democracy.

4.5. Transitional period and land reform

It became necessary that there be a Transitional Government to ensure a smooth transfer of power from the hands of a white minority represented by the National Party to democratically elected government. In the beginning of 1991, FW De Klerk had already made some important policy statements that included political freedom of some of the political prisoners and unbanning of political organisations that were banned under the apartheid legislation. Most of the racially based apartheid legislation was either abolished or partially abolished. The repealed legislation included the Land Act of 1913 and the Natives Trust and Land Act of 1936 which were the basis of land dispossession and forced removals of Africans from their land. It was in 1991 that the De Klerk Government also introduced the White Paper on Land Reform. The introduction of the White Paper on Land Reform introduced limited Land Reforms for the Africans.

It was clear that Land Reform would have to feature in any legitimate and sustainable transformation in South Africa as prejudices of apartheid were manifested and entrenched in Land distribution (van der Walt 2005: 285). The 1991 White Paper on Land reform introduced limited land reforms that included allowing „black' townships to be established in „white' areas. There was an allowed upgrade of security of tenure for some black land holders. According to Van der Walt (2005), though the reforms were limited they had good indications of which way land reform would take eventually. Van der Walt further states that there were three main issues that were raised in the White Paper on Land reform of the De Klerk government. They are the following:

- Restitution of land rights that had been dispossessed in terms of apartheid laws and practice
- Improvement of security of tenure for those whose land rights were weakened by apartheid laws and practice and,
- Introduction of measures to increase and facilitate access to land and housing for individuals and communities who had been deprived of land rights during apartheid or because apartheid

The 1993 interim constitution of the Republic of South Africa made a provision that access to land shall be on the equality basis. Section 8(3)(b) states that...'every person or community dispossessed of rights in land before commencement of this constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim such rights subject to and in accordance with section 121, 122 and 123'. Sections 121, 122 and 123 are making provision for the land claims process, the establishment of a land claims commission and the court process for land related matters respectively. Whilst according

to the 1993 constitution the Bantustans were incorporated into the rest of South Africa in terms of the functioning of courts, they were still not incorporated in terms of other administrative functions including land administration.

The Land Reform White Paper of 1991, the repeal of all racially based laws and the amendment of some laws laid a foundation for the restitution process in South Africa. As it would appear on the subsequent chapter, there had been relatively adequate reason for focusing on Bantustans as well in terms of land reform and restitution in particular. In the first chapter it has been stated that there is paucity of information regarding restitution in Bantustans and in small towns in particular. However, restitution would be viewed in small towns in former Bantustans in the same context as restitution elsewhere in the country in terms of laws, policies and historical context.

Chapter 5: Land Reform Mechanism under a democratic government-from 1994-2007

5.1. Introduction

As the negotiations were concluded and a date set and agreed for the first democratic elections in South Africa, it was inevitable that the African National Congress (ANC) and its allies were going to push for changes in government. Changes were going to be in the constitution and legislation in general and also on some fundamental policy of government. Land reform indeed formed one of the priorities of government, this is shown by the fact that amongst the first laws to be enacted by the democratic government was the Restitution of Land Rights Act 22 of 1994. The Nelson Mandela government had been voted to power on the basis of the popular mandate based on the Reconstruction and Development Programme (RDP). Land reform was also key in the RDP and the general policy of the ANC as there had been a view that landlessness was the ultimate manifestation of apartheid and colonialism.

This chapter is going to look at the policy framework of the new government and also the legislative framework that was enacted to formalise land reform. It is also clear that there are areas that need strengthening. There will be interrogation of the law and its adequacy or lack thereof, in relation to the restitution process and how that has contributed to spatial development in small towns of the then Transkei. There will also be a look into the White Paper on South African Land Policy under the democratic government. Lastly, there will also an examination of the RDP and its influence to both the legislation and policy framework of the democratic government.

5.2. Reconstruction and Development Programme

The African National Congress got elected to power on the 27th April 1994 on the basis of a programme that was seen as being an implementable programme of government. The programme was known as the Reconstruction and Development Programme (RDP). The RDP had various issues to deal with as a comprehensive programme to change the life of the those who had been oppressed and forge national unity.

However, it was clear from the RDP that the land issue is central to any meaningful transformation of the state and society in general. The RDP also acknowledged that the limited land reforms that were introduced by the De Klerk government were not adequate to address issues of access to land by the oppressed majority. The following is an excerpt from the RDP... „Land is the most basic need for rural dwellers. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. In addition, capital-intensive agricultural policies led to the large-scale eviction of farm dwellers from their land and homes. The abolition of the Land Acts cannot redress inequities in land distribution. Only a tiny minority of black people can afford

land on the free market' (RDP section 2.4.1). From the views of the ANC, land reform would not be resolved through market mechanism as many blacks were poor and as such would not afford land in the open market.

According to the RDP (1994), there are two main issues about land reform. The RDP states this as follows... „The land reform programme has two aspects: **redistribution** of residential and productive land to those who need it but cannot afford it, and **restitution** for those who lost land because of apartheid laws'.

One of the weaknesses of the RDP was that whilst there was appreciation of security of tenure, not much focus was given to this aspect in terms of policy emphasis. However, this weakness was to be rectified in the subsequent White Paper on Land Reform which had three important legs, viz.

- Land redistribution
- Land restitution and
- Security of tenure

The ANC through the RDP proposed the starting date for land restitution to be 1913, when forced removals and land dispossession was legalised by the white minority government. As indicated on the previous chapter, the land dispossession started during the arrivals of the settlers and in the 16th century and subsequent centuries. Dispossession also continued to the 19th century epitomised by frontier wars when Africans sought to resist land dispossession. Therefore, the 1913 period was just a year on which land dispossession and removals were institutionalised by the Union Government. Goforth (1998), argued that whilst the RDP has generally been a success in bringing fundamental transformation of society, it has been an abysmal failure particularly on land reform. This failure is judged by the targets that were set by the RDP policy framework which have not been achieved.

The RDP also underestimated complications of land reform, this is shown by section 2.4.14 of the RDP. In this section the RDP sets a target of redistributing 30% of agricultural land within the first five of the democratic government. Further, the RDP set a target of five years to complete adjudication of land restitution cases. This is indeed known that both targets have been elusive. According to the National Land Claims Commission (NLCC) of 2006, there were 71645 claims that were settled out of 79696 lodged claims. The settled claims constituted 89% of settled claims in almost 12 years of a democratic government rule. There has been a continued postponement of completion of the outstanding land claims; in fact in 2005 State of the Nation Address President Thabo Mbeki gave the department of Land Affairs and Agriculture until the end of the year to complete all outstanding claims. However, the Minister Thoko Didiza pointed out that the remaining claims were complicated and as such may not be resolved within the time stated by the President (Mail and Guardian, 2005)

In the Eastern Cape, the report points out challenges that are related to some technical skills that are inadequate to process claims. The report decries the in availability of knowledgeable valuers (2006: 12). The report further claims that there are challenges in settling rural land claims, however small towns that are rural in where land is surveyed have continued to be sidelined in the process. Both the ANC and the RDP document never made any reference to restitution and redistribution of land in small towns in former Bantustans. The reports of the NLCC also do not make any reference to claims in the small towns in urban areas of the former Bantustans.

The issue is that targets that were set by the RDP and the President of the Republic in numerous State of the Nation Addresses have not been met. The land claims in the small towns in former Bantustans are part of those that have not been settled. It appears that there is little attention given to the small towns in the former Bantustans. Consequently, spatial planning has been affected by this lack of focus and slow pace of settling land claims. Many municipalities in the Eastern Cape, particularly in the former Transkei Bantustan territory are unable to effectively do spatial planning. This poor local spatial planning is observed by looking at development of these towns that is uncoordinated and fragmented. Through personal experience, it has been observed that small towns of Mt Ayliff, Mt Frere, Bizana, Lusikisiki, Flagstaff, Port St John's, Libode, Mthatha and others, all have land claims that have been lodged. It also has been observed that none of the land claims in these small towns including Mthatha which is relatively bigger than all other small towns in the former Transkei, have been settled. The other observation is that there are developments that have been started which are facilitated by local municipalities but have since been „frozen' due to challenges by claimants. It has also been observed across these small towns that whilst some have adopted Spatial Development Frameworks in terms of the Municipal Systems Act of 2000, these SDFs have not been effective in guiding spatial planning. Lastly, there has also been an observation that whilst the claimants protest exclusion on development, they also have been accused by municipalities of stalling various developments and perpetuating land grab.

5.3. Government White Paper on Land Reform

The Land Policy White Paper was a culmination of a two and half year process from 1994, it was a responding to the Land Policy Green paper which was introduced in February 1996 (Land Policy White Paper 1998). Workshops that were conducted as part of consultation and engagement on the Green paper on Land Policy had the following issues that were prioritised by participants:

- Settlement and Land acquisition grant
- Support service and finance for farmers
- Government intervention on land markets

- Valuation and compensation
- Land administration and tribal authorities
- Farm workers
- Public land
- Land restitution
- Institutional framework for land administration

Out of all the issues that emanated from the engagement process of the Green Paper, for the purpose of this study only Land Administration and tribal authorities, Institutional Framework and administration and land restitution shall be discussed. There were two opposing views regarding the role of tribal authorities and land administration. One view was that the state must not hold land for black people, instead, the chief must have title deeds and redistribute land; conversely there was a strong feeling that land held by chiefs in urban areas is retarding/hampering development. The last view is central in the study that is being considered here as the land claim in Mt Frere is led by the chief on behalf of his subjects. Because of the land claim that has not been settled yet local spatial planning is apparently weak if any at all.

It appears that during the engagement of the Green Paper on Land Policy, people felt that there was ambiguity on land administration between different levels of government. Equally, it appears that there was a need for clarification of roles between the local authorities and traditional leaders in urban areas. It is this confusion that has led to some chiefs allocating land. The land allocation by chiefs in urban areas is not having a positive contribution in local spatial planning managed by local authorities (municipalities). Coordination between government departments was also raised; a critical issue that the white paper has to consider.

Once more, the cut of date of 1913 as the date that must be considered for lodging land claims was questioned, in fact there were calls that the 1913 date should be reviewed. However, there was no indication of how far back in history should land dispossession and forced removals must be considered for land claims purpose.

The land policy sets to deal effectively with the following issues:

- the injustices of racially based land dispossession of the past;
- the need for a more equitable distribution of land ownership;
- the need for land reform to reduce poverty and contribute to economic growth;
- Security of Tenure for all and;
- a system of land management which will support sustainable land use patterns and rapid land release for development. (Land Policy White Policy 1998)

The policy further affirms the three (3) programmes of land reform as land redistribution, land restitution and security of tenure for all. Land use planning is also raised by the policy document as critical for development. According to the Land Policy (1997), land reform has to contribute to economic development and encourage investment. It is indeed logical that if investment has to be encouraged there has to be a coordinated and coherent local spatial planning. The importance of planning and economic development is further strengthened by the policy in section 2.2. (Land Policy 1998 and RDP 1994). The policy states it as follows... „In urban areas, access to land is similarly a prerequisite for a successful urban development programme. Government at all levels, including local authorities, should strive to overcome all obstacles which may hamper equitable access to well located land'. The implication of the policy directive above is about the importance of planning at all government levels. Local authorities should strive to overcome obstacles which may hamper local spatial planning and the logical decision for local authorities in development and implementation of local spatial plans which must guide present and future land uses. It is therefore important to also address the capacity of the state to respond to requirements of planning and coordinating state activities across government levels.

Planning by the local state is critically important in the urban areas in particular as part of redressing the imbalances of the past (Tacoli 2003). The current planning regime is from the apartheid mode of planning which created labour reserves and put the majority of blacks away from economic and job opportunities. Therefore, the task of the democratic government is to undo this legacy of apartheid planning Land Policy (Land Policy White Paper 1998: 27). The Land Policy White Paper also makes what is referred to in the policy document as Economic Arguments for land reform. The economic arguments for land reform include:

- Major cost savings resulting from a more rational use of urban land
- More households will be able to access food on a consistent basis
- Opportunities for small scale production
- Land reform can make a major contribution towards addressing unemployment, particularly in rural areas and small towns
- Land reform will support business and entrepreneurial culture
- Land reform can have favourable environmental impact in both urban and rural areas

From the above arguments raised in the White Paper, it is clear that planning and economic development are linked. Cunningham and Meyer-Stamer (2005) also make this point that proper planning and LED are closely linked. Land reform and support to business and entrepreneurial culture is also an important point which Cunningham and Meyer-Stamer (2005) also make.

The land reform policy also addresses an important matter of institutional capacity of the state to respond to requirements and challenges of land reform. The policy paints a rather honest but worrying reality that most of the offices for land reform are not adequately staffed. As at 1998 only 304 out of 447 positions were filled. There is no evidence pointing to any improvement of the situation over the years. In fact, as it would be seen in the following chapter, an interview with the Eastern Cape Regional Land Claims Commissioner revealed that there is a problem in attracting and retaining skilled personnel. The issue of skilled personnel is generally a problem across the commission and the department of Land Affairs and Agriculture as seen in the Departmental Annual report of 2005/06.

The policy further makes a profound observation in relation to challenges of land administration in the former homelands, this is what the policy says... „The many different pieces of land legislation and systems of land administration across the country are an apartheid legacy. In the former homeland areas, in particular, the situation is chaotic. Very often, day-to-day administration and record-keeping have broken down, leading to insecurity and uncertainty as to the lawful holders of land rights. Land records have been lost, permits and other documents have been issued without regard to legal requirements, very often because the laws are unclear. The laws are often unwieldy; even routine decisions have to be made at Ministerial, Parliamentary, or even Presidential level' (Land Policy White Paper 1998: 38).

The other issue which deals with the capacity of the local state to plan and involve the affected communities is also noted in the policy. In fact the policy acknowledges that if planning doesn't involve the affected communities, it may not be acceptable or implementable (Land policy White Paper 1998: 39).

5.4. The Restitution of Land Rights Act 22 of 1994

Ntsebeza (2003: 68) describes the challenge faced by the state in terms of restitution as follows...'The daunting task facing the South African state is the establishment of a system that will address the chronic land shortage, insecurity of tenure and ineffective, inefficient and undemocratic system of land administration and management in the former Bantustans'. This statement explains the complications of land reform in Bantustans though the rest had general been viewed as democratic it is clear that Bantustans remained not democratic particularly in the land administration and management. This is so despite the fact that laws that were enacted by a democratic parliament were also covering the former Bantustans.

The interim constitution of the Republic made provision in sections 121, 122 and 123 that an act of parliament would be enacted so as to deal with matters of land reform. It is on that basis that the

democratic government developed and enacted Restitution of Land Rights Act 22 of 1994. On the preamble of the act it is clear that the act has to address the following:

- To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices;
- to establish a Commission on Restitution of Land Rights and a Land Claims Court; and
- to provide for matters connected therewith.

In terms of section 2(1)(a), the person or community that is entitled to the restitution is a person who was dispossessed of his or her land on the basis of racial discrimination after the 19th June 1913. However, there has been a general view that the date of the 19th June 1913 is an arbitrary date because land dispossessions started long before 1913 (researcher also shares the view). It is also important to note that the political settlement in South Africa was a negotiated one wherein the ANC and its allies had also to compromise on some issues, beside, there had to be a time line for management of the restitution process. The section also sets a date by which all claims must be lodged to the commission (section 2(1)(e)). The closing date had also to be set for the purpose of administrative management of the claims. Equally, there were calls and complaints that the closing date of land claims was not fair to all. This was due to the fact that in rural areas of the former Bantustans many people were not exposed to knowledge centre and as such could be deprived of exercising their right as enshrined in the Constitution and the relevant legislation.

Section 7(d) of the Restitution of Land Rights Act states that no Claimant may decide to occupy land that he or she has lodged a claim on without the permission of the „owner' or „lawful occupier'. This by interpretation means that until the claim is settled the legal occupier or owner still has rights on the land and not the claimant. However, there seems to be ambiguity on the role of municipalities where land belongs to the municipality. Section 34(1), directs that any National, Provincial or Local Government that owns land that is under a claim may make an application to the Land Claims Court to an order that the land in question or rights thereof may not be restored to the claimants. However, it appears that both sections above are either ignored by claimants and the Commission or the Local Government is ignorant of provisions in the two sections above.

The importance of the these sections in relations to local spatial planning is that if claimants on the basis of a claim that has been lodged decide to occupy land without the permission of the owner, it would be illegal. The other challenge is that the law does not point out as to what would happen to the status of the land claim if the claimant decides to invade land which they have lodged a claim on.

5.5. Process of lodging a claim

The Restitution of Land Rights Act, 22 of 1994 provides for individuals and or communities to lodge a claim if they are of the opinion that they were deprived of such land rights as contemplated in section 121 of the Interim Constitution of 1993. This section further makes it an obligation of the claimant to give description of the land that is being claimed. Claimants are also allowed to state the nature of right that is being claimed. A brief procedure of lodging a land claim is outlined in section 11(1) (a)(b)(c)(d) of the Act.

5.6. Other legislation relevant in land reform

5.6.1. Constitution

The Constitution of the Republic makes provision in the Bill of rights, Chapter 2, section 25(4)(a); the constitution states that no one may be deprived of property unless it is in terms of the law that addresses issues of national interest. Issues of national interest include land reform. Land reform is therefore a constitutional issue. Section 25(5) further compels the state to make necessary legislation to ensure equitable access to land and provide necessary resources to support such access. Section 25(7) makes provision for restitution for individuals or communities that were removed from their land on or after 19th June 1913, therefore a law of parliament regarding restitution of land rights would have to be consistent with the constitution as the constitution is the supreme law of the land.

5.6.2. Local Government Municipal Systems Act, 32 of 2000

The Systems Act, 32 of 2000 is an act of parliament that directs municipalities to set up systems for local government. Planning is also an important role of local government; chapter 5 of the act deals with Integrated Development Planning (IDP) and the resultant Plan. According to the IDP, all levels of state and government departments have to contribute in the development of the Plan. It is therefore expected that the department that deals with land reform at national and provincial level would have to work closely with local government. However, there has been difficulties in terms of the state working together across all levels of government. Local government has been charged with a responsibility to develop Spatial Development Framework (SDF) which must include guidelines of Land Use Management System (LUMS). This is necessary so as to equip the local state to coordinate, facilitate and direct development at local level through local spatial plans.

5.7. Intergovernmental relations regarding land claims

According to De Villiers (2003), there are challenges in state departments to work together on the land restitution programme. Some of the critical departments to the support of the post settlement

projects are only involved in the restitution programme much later. The result is that there is always a disjuncture on implementation of support to the claimants. There is an Act of Parliament that compels state departments to work together, but it doesn't seem to be working as desired. The Intergovernmental Relations Framework Act 13 of 2005, in section 4, states that the intention of the act is to promote coordination of implementation of legislation, policy and programmes across the three spheres of government and across departments.

Relations between the Municipality and the Regional Land Claims Commission have not been very sound, this will be clear in chapter 6. The Commission is a commission of the Department of Land Affairs and Agriculture but cooperation between the Commission and the Department seems to be very minimal. The minimal cooperation is demonstrated by the fact that whilst the Municipality is developing an SDF and the IDP, the officials of the Department of Agriculture are demarcating land on the instruction of the Chief. It also has been found that whilst the Department of Agriculture is demarcating land as instructed by the Chief who is a claimant, the regional office of Land Affairs has opened a case of land invasion against the Chief.

Clearly, government has not had a coordinated programme to support the restitution programme and land reform in general. The democratic government has made attempts to pursue land reforms but this has been fraught with intergovernmental relations that are not existing. It also has been challenged by the pace of settling or resolving land claims or developing support programmes for post settlement. Whether it is the skills or budgetary constraints, government departments and different spheres of government still have to improve for meaningful land reform programmes.

Chapter 6: The Mt Frere Land Restitution Claim-Results and Discussions

6.1. Introduction

The Mt Frere land claim is one of many land claims that were lodged by communities and individuals in the former Bantustan small towns of Transkei. In this chapter a brief history of land dispossession from the period of colonial rulers and later apartheid laws will be analysed. As part of history of the land claim, the role of the democratic government in contributing to both strengthening local government and relations with communities will be discussed. The thrust of the case study is the impact of land claims in local spatial planning by local municipalities. The ability of the local Municipality to carry out local spatial planning in view of the land claim that has been gazetted will be analysed as well. The Regional Land Claims Commission and its ability to process claims will be considered in the light of available skilled personnel in ‚right' numbers. The views of various stakeholders who are or may be affected by the land claim will be presented and analysed. Interestingly, there will also be a discussion of intra and inter stakeholder tensions that have come to characterise the process of the land claim. Accusations by the claimants have been levelled against individuals in the Municipality, business and others. There have been accusations levelled against the Land Claims Commission, the Chief and individuals who have allegedly contributed negatively in the process of the claim.

6.2. Land reform in the Transkei

There is little or no evidence of land reform programmes in the former Transkei homeland particularly as it relates to the small towns. This is a stark evidence of failure to record the history of the people in the former Bantustans. However, there is some work that was done by some authors including the late Govan Mbeki who documented the Pondo Revolt of 1960. During the Pondo revolt there was evidence of the King of the Pondos who was co-opted by the missionaries working with the apartheid government to introduce what was known as the betterment scheme in late 1950s (Mbeki, 1984). Whilst the missionaries posed as bringing civilisation, they were also used as any entry point through which people were dispossessed of their land and limited their livelihoods by introducing the „Trust' system. The systems was introduced using the Bantu Authorities Act of 1957 which was resisted by Pondo people. As indicated earlier there is little documented history on the small rural towns in the Transkei and what role did the authorities in the Bantustans play to enforce land dispossessions. However, in the following chapters an account of some of the respondents shall shed light on the historic role of the Bantustan government and the local authorities.

Many of the small towns in the former Transkei were established under the British rule during or after the frontier wars, as the English colonisers proceeded form the South to the North. Mt Frere was

established in 1878 by Sir Frere who was a British installed administrator. The piece of Land that was used by the white settlers was earlier requested from the local Chief and was allocated as a small portion at a place know as Sophiatown (oral evidence from Acting Headman Diko, one of the key informants). It appears that the settlers needed more land for the town to develop, as a result more land was acquired by force from the natives who were pushed towards the East of the town to a place now known as Lubhacweni (that is where the Acting Chief currently stays).

When the Bantustan was formed in 1976, the land that was used by the town was inherited from the Village Management Board (VMB) which functioned as a Municipality at the town. Proof of this inheritance is seen on annexed deed of donation by the Queen to the VMB in 1958 even when the Municipalities developed further under the Bantustan rule, it was more of the same rule as was during the period of the setters.

However, there is no documented evidence of the owners of land in Mt Frere who resisted dispossession of land and there has not been an oral submission of resistance of any kind. The only concern that was raised by the chief was that it appeared that the settlers were greedy because they were allocated land but soon needed more and extended the boundaries of land beyond what had been agreed on. However, it is recorded that Bartle Frere who had been an appointed governor in the Cape Colony was an ‚expansionist' who started wars that resulted in displacement of natives and loss of prime land. Much of the native land was lost between 1870 and 1878 (Oliver, Fage and Sanderson: 1985). There were many frontier wars that were waged by the English against the native in a quest to conquer land from the Cape to Limpopo. It appears that the Transkei government which was formally established in 1976 did not have any intentions or programs of land reform particularly around land restitution in small towns. The researcher argues that land matters remained the same as they were under the apartheid system hence a general view that Bantustan governments were nothing but the extension of apartheid rule which ensured that Africans did not develop. Finally, it may be inferred that the Bantustan government did not make any difference to what the apartheid rule did, in fact it may be argued that the Bantustan government sought to maintain the status quo of land dispossession as designed by the apartheid government and its processors.

6.3. History of Mt Frere from the colonial era

Mt Frere was established in 1876 and the town was named after governor Sir Bartle Frere as stated in the previous chapter. This town was setup as a trading point by Donald McKay and McGregor family (www.genealogyworld.net). The McKay family had travelled from King William's Town to the Transkei to establish a European settlement in Bacaland. There were several places that were already under the Wesleyan missionaries in Bacaland. There was Osborne in Tshungwana which was

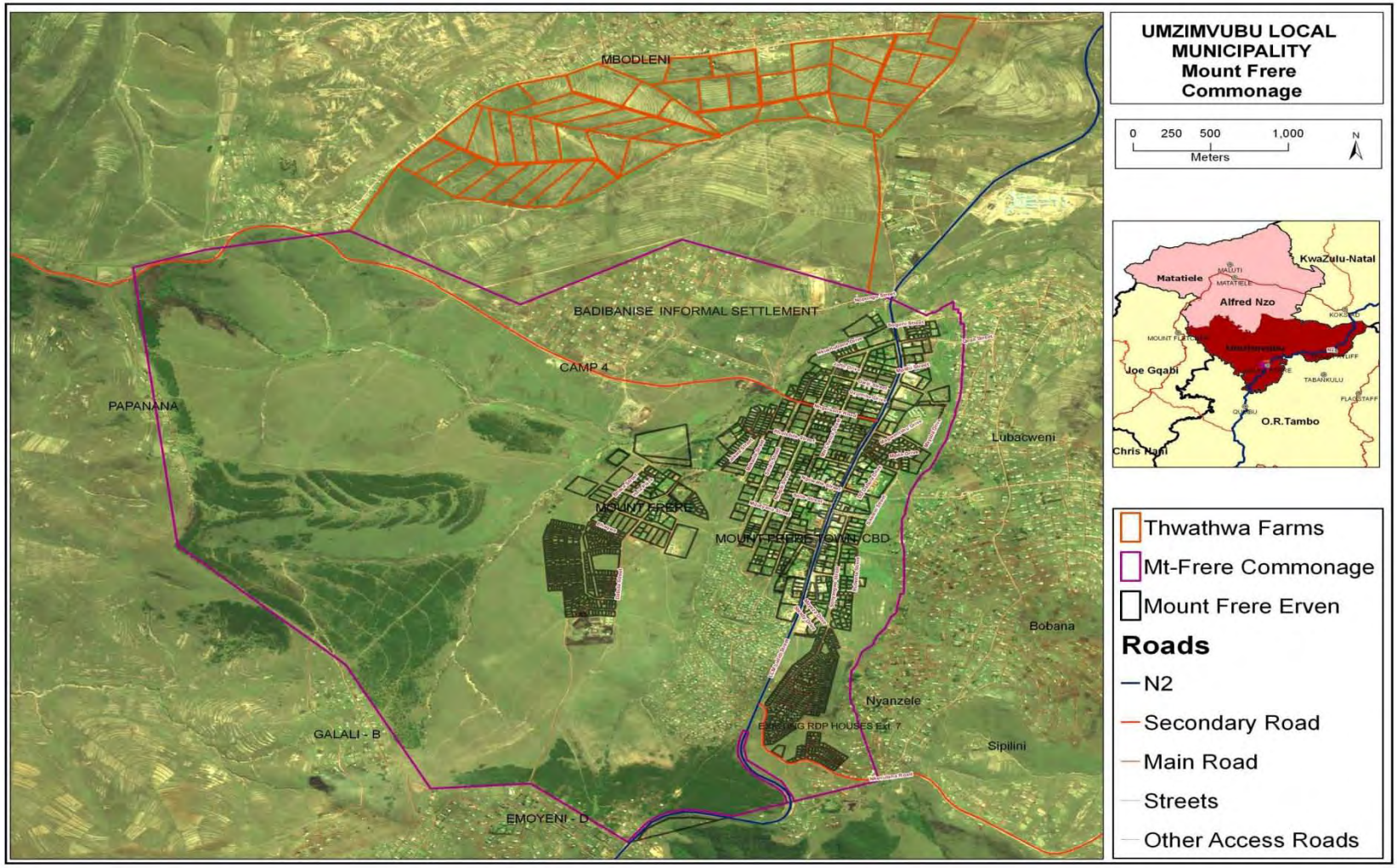
established in 1839 under reverends Garner and Hulley who were later succeeded by Reverend Charles White. According to Acting Headman Diko (Interviews, 27-05-2009) who lodged the land claim on behalf of the community in December 1998, the „white' people came only for temporal station and were allowed to setup their residential area on the basis of temporal shelter.

According to the deed of donation from the Queen of Britain October 1957, Mt Frere was declared a formal Municipality formerly known as a Village Management Board (VMB). The VMBs were created around all small towns in the Transkei. These structures were created to manage affairs of the town including provision and maintenance of services. Because of the origins of the towns, the VMBs were largely controlled by whites who had come to settle either for trade or other reason. At the edges of the VMBs were poor communities who did not have access to the services in town. In fact, there were few blacks in town. According to the Encyclopaedia by Rosenthal there were 1322 people in 1880 in town. Out of the 1322 people only 250 were black. It appears that many white people progressively left Mt Frere with time as it is now largely occupied by black people with a few coloured people.

6.4. Forced removal of families

The Mt Frere Village Management Board (VMB) was established in 1901 by proclamation No. 255 of the same year. The VMB had a jurisdiction over a large parcel of land that was not clearly defined (Land Claims Research report, 2002). By 1921 the Board adjusted the extent of the erf known as erf 352 to 505,3538 hectors. At the time the secretary of the Board was Mr. Whitfield. In 1953 the Board annexed the Thwathwa farms to erf 351 and were subdivided. In the process of the Board usurping more land to its control, 42 families were forcefully removed. There is no clear account of removal of the 42 families from the research nor is it there from verbal account of the claimants. The Thwathwa farms (Map. 3) were used for both cultivation and cattle grazing field. Erf 351 was held by the Department of Land Affairs of the apartheid Republic of South Africa, however the same was ceded to the Mt Frere VMB by deed of transfer 118/1957.

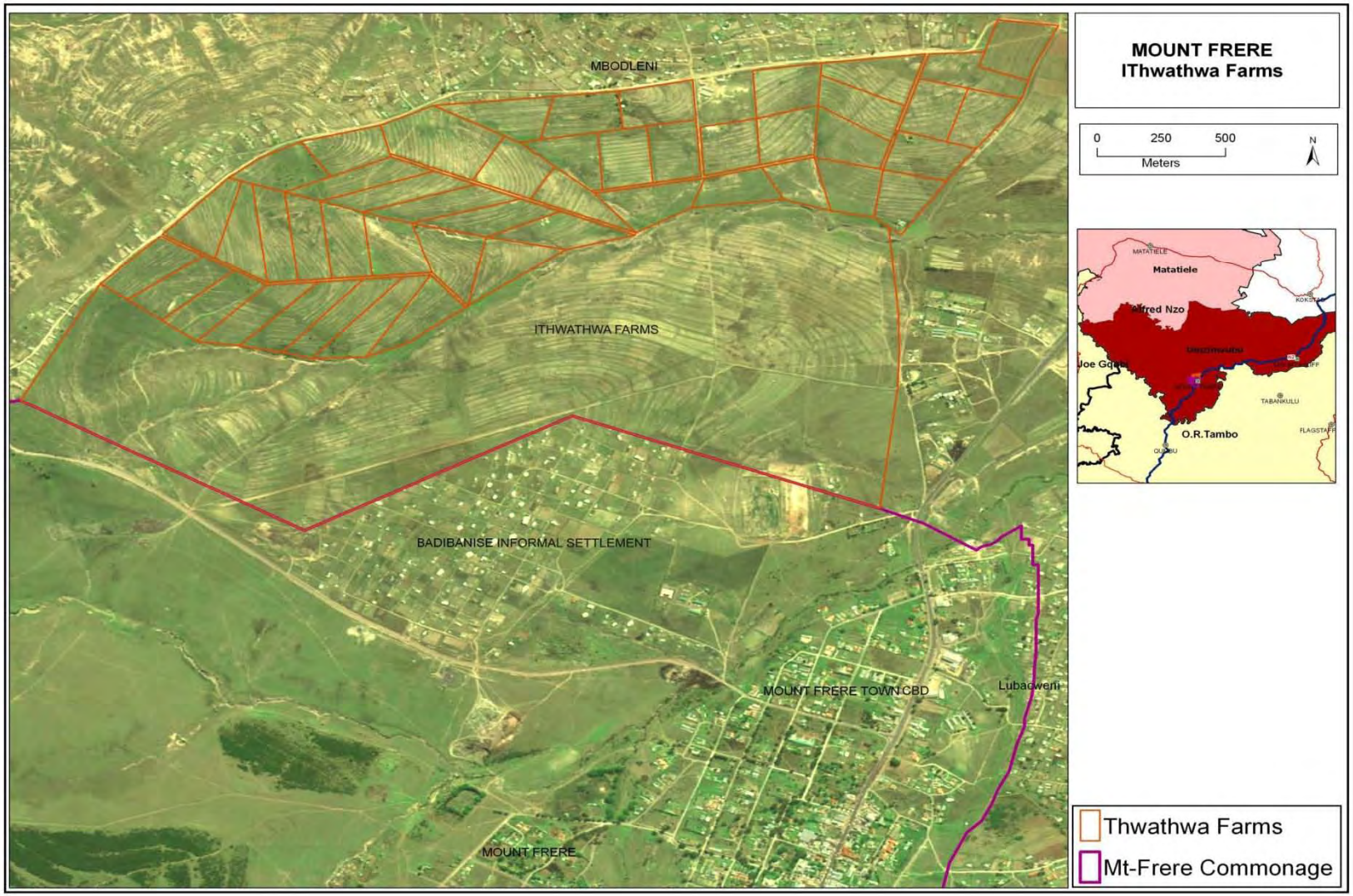
Map 2. Erf 351 known as Mount Frere Commonage



6.5. Mt Frere Transitional Local Council era

When the new democratic government came to being in 1994, amongst other important issues to tackle was the form of local government. The RDP had already given indications of what kind of local government was required as part of a democratic state. The local government White Paper also further explained the kind of local government that was need for all South Africans regardless of race. To realise this intention, the National Party government introduced and enacted the Local Government

Map 3 Ithwathwa farms



Transition Act 209 of 1993. However, the democratic government had to amend the act in 1996. The amended act made provision for three phases of transforming local government viz.

- The pre-interim phase, which prescribed the establishment of local forums to negotiate the appointment of temporary Councils, which would govern until municipal elections.
- The interim phase, beginning with municipal elections and lasting until a new local government system has been designed and legislated upon.
- The final stage, when a new local government system will be established.

During the second phase of transition, Transitional Local Councils (TLCs) were established to run the affairs of the Municipality. Councillors for TLCs were democratically elected and there was an attempt to strengthen administrative capacity. However, at this time the TLC was still serving communities in the „urban' area though the structures were democratically elected. It is during the time of the TLC of Mt Frere that the Minister of Local Government and Transitional Affairs, MPL Smuts Ngonyama issued a deed of donation in respect of erf 351 in favour Mt Frere TLC. This meant that the new Mt Frere TLC is a legal owner of erf 351 and would be responsible for spatial planning of the area. Erf 351 is the mother erf of Mt Frere, it is also the erf that is subject of a land claim. It appears that when a land claim was lodged in 1998, the Municipality was not aware of the land claim.

In 2000, December 05th local government elections were held and new councillors were elected on the basis of a wall-to-wall municipality context. It appears that the new council was confronted with the reality of a land claim early in 2001. There are minutes of a meeting that was held by the claimants and the new councillors. In the minutes there were several issues that were discussed; they included housing, economic development projects, needs of the claimants and which areas on the claimed land are to be returned „unconditionally' to the claimants and which areas will remain in the control of the Municipality. According to the agreement, an area on the south western side of the town of Mt Frere referred to as Camp four (4) would be restored „unconditionally' and Camp 3 would be used for development of housing (annexure 1). The traditional leadership demanded that out of the planned houses that were 341, half of the houses must be given to the claimants. The rest of the land that is claimed may be used by the Municipality for developing the town but the Municipality must continue to consult the claimants.

6.6. The Donation of the Erf 351 to the Mt Frere TLC

In 1994 MP Derrick Hanekom was appointed as Minister of Land Affairs and Agriculture by President Nelson Mandela. Mr Hanekom working with the Provincial Government Member of the Executive Council (MEC) responsible for Local Government and Traditional Affairs, MPL Smuts Ngonyama donated erf 351 to the Mt Frere TLC in 2000. Donation of erf 351 took place in terms of

section 2(1)(a)(1) of Land Administration Act 2 of 1995 and the State Land Disposal Act 48 of 1961. The deed of donation dated 20th November 2000 bears testimony. At the time of donating erf 351 measured 1208,31999 hectors which included the Thwathwa farms, which indicates that over time there has been a progressive annexation of land into erf 351 by authorities.

6.7. Lodging the claim in Mount Frere

A land claim that meets all the requirements in terms of section 11(1) is then gazetted; the gazetting of the claim means that the Regional Land Claims Commission may start to investigate the claim in terms of section 12 of the act. However, whilst members of the Traditional Council accepted that the Municipality, the Claimants misunderstood the meaning of gazetting of the Land Claim. Experience from other similar land claims in the small towns of the former Transkei, showed that claimants interpreted the gazetting of the land claim as also conferring some land rights to them. This is evidenced by the court cases that are in the civil courts in Mthatha, Lusikisiki and others where there is a land claim (the researcher has witnessed some of the cases first hand).

As part of the process of lodging a claim, section 13 makes provision for mediation by the Commission in case there are competing claims for the same area or in terms of section 13 (c). Section 13 (c) makes provision for mediation if the land is owned by the state and the state is opposed to the claim. In most cases the small municipalities that depend on the land in the urban and peri-urban area for development often are opposed to such claims (this will be further demonstrated in the following chapter). The other issue for concern regarding the process of lodging a claim is the time that it takes to settle the land claim. Through the RDP the ANC committed itself to redistributing 30% of the land, approximately 25 million hectors in the first five years in power. The target was further revised to 30% of white owned farms redistributed to black farmers by 2014 (Walker 2008: 200). According to Walker (2008), the target has further been revised in February 2008 to set 30% target for 2025. This is indicative of how slow the process of concluding the claims is.

The Restitution of Land Rights Act 22 of 1994 made provision for individuals or communities that were forcefully removed on their land after the racially based Land Act of 1913 and the subsequent laws. It therefore qualified the community of Mt Frere to lodge a claim on erf 351 as they believed that they were forcibly removed on their land to make way for whites who occupied their land. The deadline for submitting claims to was be the 31st December 1998; the community of Lubhacweni led by Acting Chief Diko lodged the claim on the 31 December 1998.

The land claim was gazetted on the 07th June 2002 and published in the government gazette. The valuation of the property took place, however, it appears that valuation of land took a very long time.

The issue of delays to valuation is a country wide challenge for most of land claims (NLCC, 2006). Once the claim was gazetted, it meant that the claim was under consideration for restitution processes. However, the Regional Land Claims Commission had to first conduct a research so as to ascertain the actual families and individuals that were affected by forced land removals. The research report that was concluded during the year 2003 with no actual dates, is only half a page that could be obtained. The half a page report that was inspected was indicative of incapacity in the RLCC as collaborated by the Regional Land Claims Commissioner during the interview by the researcher (11-02-2009) that they are unable to attract and maintain skilled personnel.

After the claim was gazetted a number of meetings took place between 1999 and 2001. The meetings and workshops aimed at capacitating claimants in respect of their rights and the process that has to be followed. In these meetings and workshops, the RLCC explained the provisions of the Restitution of Land Rights Act 22 of 1994. According to the Community leaders (Interview, 27-05-2009) who lodged the claim on behalf of the community, the Municipality did not want to be part of the process from the beginning. The Traditional Council leaders say „it was better when the new Municipality that was elected on the 05th December 2000 came to office' as there was some form of engagement facilitated by the RLCC. Most of the meetings between the Municipality and the claimants took place during 2001 and 2002 facilitated by the RLCC. An official (Interview, 11-02-2009) from the RLCC alleges that the Municipality disengaged from discussions for no apparent reason. This has led to tensions between the Municipality and the claimants and the chief in particular.

A number of issues emerged as findings in relation to the above presentations of research work. The first is that the claimants in Mount Frere had as interpretation of the gazetting the claim to be almost conferring land rights to them as claimants and consequently stripping the municipality of land rights. This finding confirms the one of the central arguments that the confusion of the meaning of gazetting a claim has not been demystified, particularly for the claimants. The confusion has led to a situation where the municipality has not been able to facilitate and develop a Local Spatial Plan. It has also emerged that the claim was lodged in 1998 but by 2009 at the time of the research, there was no indication of when the claim be finalised. The inability by the RLCC to settle or finalise the land claim has a contributed in the confusion of land rights and consequently compromised the ability of the municipality to do Local Spatial Plan.

6.8. Relationship between the Municipality and the claimants as represented by the Traditional Council of Lubhacweni

As much as there was an anticipation of good working relations in terms of use of land i.e. erf 251, it was a matter of time that relations started to degenerate to an acrimonious relationship of which court

cases were a significant indicator of how bad the relations were. The agreement that was entered into between the Municipality, Regional Land Claims Commission and Lubhacweni Community represented by Acting Headman Diko gave a general sense of both parties' will to work together. There was an agreement in relation to allocation of houses in extension 7 which, according to the claimants, is part of camp 3. According to 100% of the Traditional Council members, they did not want camp 3 to be restored to them, but would want to benefit from developments. This agreement, particularly regarding housing, was made well after the beneficiaries were captured and approved by the housing central system that manages the data base of beneficiaries. It therefore questions the practicality and authenticity of the agreement itself. Claimants further indicated that they did not want the return of the land but rather would opt for compensation as they realised the importance of developing the town. They, however, indicated that camp 4 had to be returned to them unconditionally. It is, however, unclear what „unconditionally' meant, because when the Traditional Council members were asked as what the plan for camp 4 was, they indicated it needed to be planned and the Municipality would have to assist them in planning.

An official who was the Acting Town Clerk of the Mt Frere TLC argues that there has never been a good relationship between the Municipality and the claimants (interview, 07-02-2009). The official revealed that there was a court case that was already pending before the National Local Government elections of the 05th December 2000. According to the Officer, the case was withdrawn by the newly elected leadership in 2001. The case that was pending was in respect of land invasion allegedly perpetrated by the claimants on the pretext that their claim has been gazetted.

Talks and engagements continued into 2002 between the Municipality and Lubhacweni Community, with some councillors questioning the rationale of the continued engagements when the very Acting Headman was accused of illegally selling land for residential purpose. It is alleged that the Acting Headman continued to sell land on an area that was earmarked for light industrial and business development. However, there are no spatial plans in the Municipality that collaborated the planned land use on the land allegedly sold by the Claimants illegally. One of the former members of the Traditional Council of Lubhacweni had resigned from the Traditional Council after he had realised that there were some in the Traditional Council who were illegally selling land before the claim had been settled (interview, 27-04-2009). He alleges that money was collected for personal gain and nothing given to the rest of the Claimants. It was found that the Regional Land Claims Commission was also aware that there were allegations of selling land illegally by the some Claimants or their representatives (interview, 11-02-2009). Section 11(7)(d) states that no claimant may enter and occupy land without the permission of the legal owner. This by implication, gazetting and validating the claim doesn't suggest the claimants have rights that are restored in terms of the Act. It is against this background that by the end of 2002 the Municipality had instituted legal action against some in the Traditional Council for illegally selling „municipal land', and those who had „illegally' occupied

portions of the remainder of erf 351. The following are case numbers of the cases before the High Court of Mthatha: No. 845/2002; 368/2005; 367/2005 and 1239/2005. Case no. 368/2005 was specifically interdicting the Traditional Council from further disposing municipal land illegally. Clearly, from the court cases above, relations between the Municipality and the Traditional Council had totally collapsed. Some in the Executive Committee of the Municipality questioned the legitimacy of the Traditional Council leadership of the Lubhacweni Tribal Authority. So, they didn't see it correct to accord respect and what they termed as „ soft treatment' from the Municipality. It was also confirmed by a senior official in the Department of Land Affairs in Mthatha, that there was a case opened for illegal land allocation and illegal land sale by some senior leaders in the Lubhacweni Traditional Council. The case number for the case initiated by the department of Land Affairs is Cr No. 16/11/2005. According to the official of the department, the matter was also handed over to the Special Investigating Unit (SIU). It is however not clear how far the case and investigation has progressed to date.

From the proceeding discussion of the results of the interviews with respondents, even the claimants do accept that the Municipality has a duty to do Local Spatial Planning. This is so despite the fact that it also has emerged from the research the Umzimvubu Municipality has capacity limitations in relation to Spatial Planning. This emerged when both the Traditional Authority, the Business Community, the Municipality agree that the Municipality has to carryout Local Spatial Planning even though there is a pending land claim. However, there is also evidence as confirmed by 70% of the respondents and the court cases that the delayed settlement of the land claim has led to illegal land occupation by claimants or those who were allowed by claimant representatives. It also has been found that the delayed settlement of the Land Claim has led to tensions between the Claimants and the Municipality. The end result of the tensions is the inability of the Municipality to carryout Local Spatial Planning.

6.9. Key issues emerging from the regarding the relationship between the Municipality and the Claimants

What emerges from the above evidence is that there is bitter acrimony between the Municipality and the claimants. The acrimony is as a result of blurred lines of responsibility where a land claim has not been settled. The Claimants continue to say the land is their though there is no formal award or settlement in terms of the law. The Claimants are convinced that because the Land Claim has been gazetted it means they assume land rights. However, the 100% of the respondents including the Traditional Authority agree that the Local Spatial Planning is a responsibility of the Municipality. The second emerging issue is

that land invasion has been planned and is executed carefully with possibility of land exchanged for money. If land is exchanging „hands' without proper and legal process the ground is fertile for corruption and development would be retarded.

6.10. Local Spatial Planning and the Land Claim in Mount Frere

The information presented below in relation to Local Spatial Planning and Land Claim in Mount Frere resulted from research that was undertaken to find relationship between Spatial Planning and Land Claim. Umzimvubu Municipality tried to formulate a Spatial Development Framework in 2003, however, examination of the plans that were provided by the Municipality, serious challenges with the quality of the SDF as it failed completely to have forward thinking in it (Map 4). The only emphasis that is evident on the maps is current zoning and land use for all the erven in the town of Mount Frere. It is therefore fair to conclude that what has been presented as a Spatial Development Framework was not representative of an Spatial Development Framework as it showed no forward planning. This points out a matter that was put as a hypothesis that there is limited skill regarding planning in Umzimvubu Municipality. Councillors that were interviewed from three different wards that are all affected by the land claim have indicated that there is a challenge with ability to have proper and coherent local spatial plans. This is due to the quality of staff that is available at the planning section of the Municipality that is either not properly trained or is inexperienced.

The Municipality's deterrent of land invasion was to use civil courts instead of approaching the Land Claims Court as the Municipality alleged that it is the claimants themselves that were perpetuating the land invasion. The evidence of use of civil courts as a deterrent to land invasion is evident from the court cases that were lodged in the high court by the Municipality. The inability of the Municipality to have long term plans that are expressed in the SDF is a huge challenge. In this situation, the Municipality is unable to guide development because there is no tool that is used. It therefore becomes chaotic because everyone does what they think is appropriate wherever they think is appropriate and as such the Municipality only reacts in a „knee jerk' way to all developments around town. Evidence of this chaotic situation is in the area called Badibanise which 100% of respondents during interviews, have confirmed that it was earmarked for light industrial development area but it currently an informal settlement that is allegedly authorised by the claimants of their representatives. This in ability to plan in a coherent manner is also expressed by 100% members of the Mt Frere Taxi Association (interview, 01-05-2009), they blame the Municipality for inability to decide the taxi rank location in town. There is currently no taxi rank, taxis are using parking bays on the N2 as a makeshift taxi rank. The taxi industry says the Municipality is at the mercy of some powerful business people who are having interest on the location of the taxi rank and as a result there has not been a taxi rank in Mt Frere. The taxi business lost an investment of about R 40 million in 2003 due to the fact that the

claimants had agreed to the development but when investors were introduced and the claimants were invited, they pulled out of the agreement, claiming to be advised by the RLCC officers (the research was part of the meeting where investors were presented and claimants pulled out of the deal).

Fig. 6-1 Taxis along the N2 as a Taxi Rank

This resulted in the investors pulling out. Once more, the lack of a SDF has played a negative role in identifying space for a taxi rank and the role of the RLCC and claimants may have contributed in the problem.

On the other hand business representatives (interviewed, 01-05-2009) are confident that if there was no land claim, the town would have developed far much more than it has now. The business also blames the Municipality for inability to plan the town properly to guide development. The business and taxi industry also blame the African National Congress (ANC) local structures for interfering with the running of the Municipality. The allegation is that some leaders of the ANC have business interest and as such the planning of the town has to be in line with their interests. The African National Congress Regional Leadership, however, distanced itself from any of such interests instead. Instead the ANC blamed the problems of planning to a historic legacy of apartheid planning. The ANC was also quick to blame the RLCC for its conduct and unexplained delays that have an impact on the

ability of the Municipality to proactively plan for development of the Municipality. The businesses and the ANC also agree that the town has lost investment because no investor wants to risk and invest where there is a land claim that is still pending. Consequently, lots of job opportunities have been lost and economic opportunities have also been lost owing to the unresolved land claim. In fact the taxi industry leadership feels that the town should not have been subjected to a land claim as it belongs to all and not a certain category of people; they argue that it should have been a compensation issue right away.

The Restitution of Land Rights Act, section 13(c) states that in a case where the owner of the land under claim is the state and is opposed to the claim, the Chief Land Claims Commissioner may direct the parties concerned to settle the dispute through mediation and negotiation. The research revealed that at no stage was there an attempt to subject the alleged land invasion by claimants to the National Land Claims Commissioner for mediation as all the Municipal officials and councillors were not aware of such provisions in the Restitution of Land Rights Act.. The Restitution of Land Rights Act makes a provision for national or provincial or local government to apply to the Land Claims court for an order that precludes restoration of claimants of land that is owned by the state (section 34 of the Restitution of Land Rights Act). In fact, once again the research found that the Municipality was not familiar with the provision of section 14 of the Act. The Regional Land Claims Commission officer (interview; 11-02-2009) says there is no land to restore because the „Chief" has invaded the land that he is claiming. It therefore is fair to expect that the officers would advise the Regional Land Claims Commissioner to take an appropriate decision of not restoring the land because according to the interviews with the RLCC officials, there is no land to restore. It is also clear that the two parties, Municipality and the claimants are in dispute hence the court cases in the civil courts. It would therefore be expected that the Regional Land Claims Commissioner would invoke section 14(1)(b). This section gives power to the Regional Land Claims Commissioner to refer to the Land Claims Court a claim that is not feasible to resolve through mediation and negotiation.

The major finding of the research is that there is no coordinated land use due to absence of a well managed Local Spatial Plan by the Municipality. It has also come out of the research that all parties, including the Claimants, the Regional Land Claims Commission, Taxi leaders and the African National Congress agree that it is the municipality that has a responsibility to do spatial planning. The Traditional Authority leadership also conceded that the growth and development of the town has to be guided and managed and the Municipality is a better placed institution to do so. One of the central arguments of this research is that the slow pace of settling land claims affects the Municipality's ability to develop and manage Local Spatial Plans. The results revealed indeed that the slow pace of settling the land claim and the resultant issues that include land invasion, court cases have hampered the Municipality's ability to develop and manage Local Spatial Plans as confirmed by all the

respondents that the municipality is the rightful institution to do Local Spatial Planning but because of Land Claim it is not possible to do so.

6.11. Local Spatial Planning and Local Economic Development in Mount Frere

According to Gruber (1993), in a land restitution process where the state is the owner who had dispossessed the previous rightful owners, it is easier to restore land. But it is quite difficult in the case of Mt Frere and, may be, in other similar situations of small towns. Even the claimants themselves agree unanimously that the importance of the Local Municipality in relation to local spatial planning may not be replaced (interviews, 27-04-2009). There has also been a 100% agreement across interviewees that the Municipality is central in local spatial planning (interviews, 11-02-2009 and 27-04-2009). The youth leaders in particular, raised matters of unemployment that is affecting them directly and negatively; they also raised the unavailability of sporting facilities for young people as a consequence of poor or non-existence of local spatial planning. A business representative interviewed on the 27th April 2009 said if the land claim were to be awarded to the claimants without the Municipality...'there would be chaos' because planning would not be done at all and investors would flee.

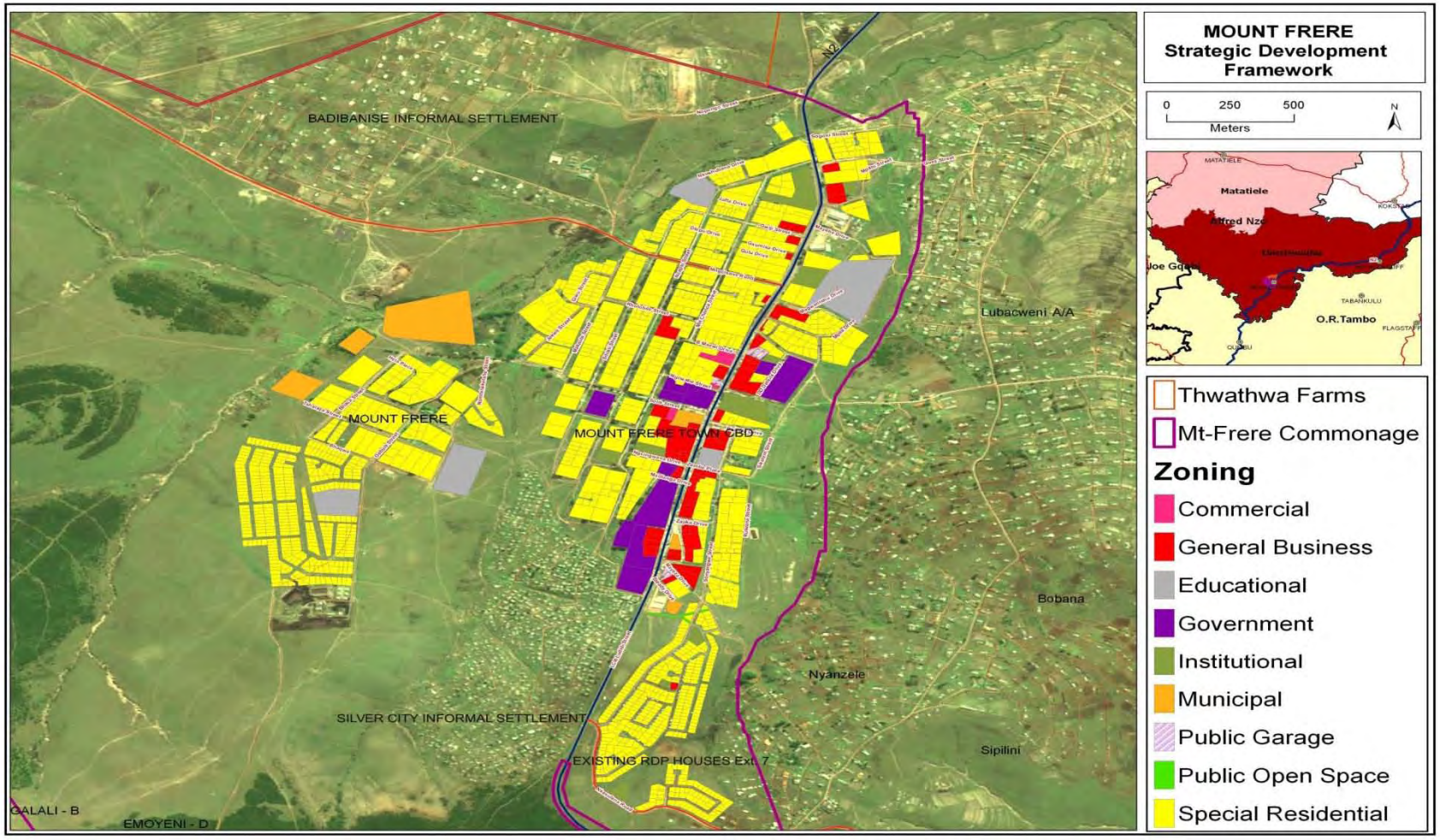
The town has remained linear (see Map 3) particularly the Central Business District (CBD)and thereby putting pressure on the services like the roads and transport, electricity, and others ; it also has resulted in congestion in town resulting in „less favourable' conditions (see fig 2 below) for formal businesses (interview, 27-04-2009). Because of poor local spatial planning, the Business representatives and Taxi Leadership; Youth leaders argued that businesses are unable to expand in town and as such the town is not growing (interview, 27-04-2009). One of the senior citizens of Mt Frere who was once a Mayor, puts the blame on the claimants that the town is not developing because of the land claim. Camp four was initially agreed to be „allocated' for light industrial township, 90% of respondents argued that the claimants were well aware of the intentions of the municipality to create a light industrial township in Camp 4 even though it was never presented in a map (interview, 27-07-2009). The youth also agreed that camp four was agreed as a place for light industrial township, however the Municipality failed in enforcing this agreement and never put it in a municipal map for all to know (interview, 09-04-2009).

Fig. 6-2. Taxi rank along N2, cars doing U-turn on a busy N2 and truck off-loading

The National Land Claims Commissioner says the land restitution is supposed to facilitate reconciliation, restoration of land right, and create an environment for those that were marginalised to participate in the economy (2008). In fact land reform was one of the important issues that dominated negotiations around South Africa's constitutional framework (Boyce, 2003). This implies that the land restitution process has amongst other chief responsibilities, to contribute in economic development. Land is an important and scarce resource for development of any kind.

The main finding from this section of the research was that the land claim has had a negative impact on the Local Economic Development as signified by the loss of a potential investment of R 40 million Rands for a Taxi rank development. According to the Business leadership, the fact that businesses are concentrated along the N2 with no real prospects of the town expanding is due to the unsettled land claim.

Map 4. Umzimvubu Municipality: Mount frère SDF



6.12. *Institutional capacity of the Regional Land Claims Commission and Umzimvubu Local Municipality*

In an interview with Mrs Mpithi (business representative), she argues that if there were capable official in the Municipality there would have been better spatial planning. From the plans and maps that were called SDF maps, it may be concluded that the Municipality has very low capacity regarding spatial planning. The maps that were presented as SDF maps were only zoning maps that did not show any trace of future direction of the development of the town. The SDF is expected to indicate future development trends that are expected, of which it is not the case with the Mount Frere SDF. It has been observed that the ‚six pillars' of planning as proposed by Sandercock (2003) have not been applied in Umzimvubu Municipality. The ‚six pillars' of planning are as follows:

- Rational public/political decision more rational
- Comprehensive: integrative, cooperative and hierarchical
- Emphasis on the place making
- State-directed futures
- Planners representing the public interest, and
- Value-neutral

The above six pillars of planning were not evident in the SDF of Mount Frere. There was no participatory process by all stakeholders to formulate the SDF, it was a desk top exercise that was driven by a consultant (the researcher had firsthand experience during the process). About 70% of the respondents were convinced that part of the problems is due to municipal incapacity which they say been so for some time. He argues that until the Municipality has good experienced planners there is still going to be challenges beyond the land claim (interview, 27-04-2009).

The Regional Land Claims commission made a very honest and frank admission that her office has a shortage of skills amongst the personnel. Currently, the Land Claims Commission is in need of the following skills so as to do its duty properly:

- Researchers for validation process of claims
- Planners for urban and regional planning
- Facilitators for social facilitation
- Mediation and conflict resolution to deal with such matters as they may arise

According to the Commissioner, the Regional Land Claims Commission has 501 (five Hundred and one) positions. Out of the 501 positions there is a 32% vacancy rate which is caused by, amongst other things, high level staff turnover. The Commissioner blames the vacancy rate on turnover on rare and critical skills. There is also a blame that is put on political pressure and expectations of the commission to perform which is increasing work load. The Estates Officer (interview, 11-02-2009) argues that the RLCC has a serious shortage of skilled personnel, which makes it difficult to work with the RLCC.

The research revealed that both the RLCC and the Umzimvubu Local Municipal have a challenge of capacity in relation to town planning. The RLCC has indicated that there is an ability to recruited and maintain skilled staff and the Municipality also indicated that there is no planner that has stayed with the municipality for more that 18 months since 2000. It is therefore not expected that the process of land restitution would be quick. The Commissioner (interview, 11-02-2009) corroborated the NLCC annual report (2003 and 2006) in saying that some of the claims have not been resolved because they are complex claims. She further stated that the urban land claims in particular were very complex hence the commission was unable to resolve them speedily. This inability to resolve urban land claims is to a greater extend, according to the Regional Land Claims Commissioner due to lack of skilled personnel.

Ward councillors of the affected wards alleged that the other challenge with the RLCC commission is that the resolution of the claims is deliberately delayed. Claims are delayed by the staff members who would be out of jobs if the commission were to finalise its tasks. There also has been an allegation that part of the delay of the resolution of claims in urban areas where there are development plans is corrupt practices (interview with Municipal Official, 11-02-2009). However, there is no proof that was presented to support the allegation. He further alleges that other land claims in Mbizana, Lusikisiki and Mthatha are all stalling because the RLCC staff is instigating claimants not to work with nor trust municipalities.

The Regional Land Claims Commissioner also points out the inadequate funding as a major contributor to the delay of settling land claims. Both the Annual Report for 2007/08 and 2008/09 financial years of the National Land Claims Commission, indicate that there is a challenge of financing of the land restitution programme due to cost of land. The Regional Land Claims Commissioner admits that there has not been adequate focus on the land claims in small rural towns of the former Transkei (interview, 11-02-2009). She says the priority has been on land claims that would affect a larger number of persons and the commission is also directed by policy in terms of priorities due to inadequate capacity of the Commission. Noting that towns are high level service nodes, it would be logical that there are also a number of people that are affected by the land claim or

settlement of it. The chairperson of the taxi association in Mt Frere puts it clearly by saying...'the town belongs to all because everyone uses the town' (interview, 01-05-2009).

The institutional capacity of both the RLCC and the Municipality, emerged as a major weakness to deal with the Land Claim. The final question of the research was to what extent does the institutional capacity of RLCC and the municipality affect Spatial Planning? 100% of those questioned in relation to the institutional capacity issues to handle the Land Claim, agreed that both the RLCC and the Municipality do not have the requisite skills and capacity to handle the claim. The lack of such skill and capacity has a negative effect in developing and managing the Local Spatial Plan. One of the central arguments is that there is a lack of understanding of the importance of the Spatial Planning process. Two of the interviewed councillors and both business and taxi industry leaders agreed that the municipality and the RLCC do not understand nor do they take the Local Spatial Process serious.

Chapter 7: Summary of findings, Conclusions and Recommendations

7.1. Analysis of findings

The preceding chapter has addressed issues that were raised in both the research questions and the central arguments of the study. The purpose of this chapter would be to summarise the findings, draw conclusions in respect of what the study revealed and finally make recommendations. The rationale of the study, as stated in the first chapter is that the challenge with the land restitution in small towns of the former Bantustans is that there is paucity of information. The study also argues that the delayed settlement of land claims in small towns has a negative impact to the development and management of Local Spatial Plans. It is therefore against this background and the research question and central arguments that this chapter would summarise the findings and draw conclusions.

In terms of the Annual Report of 2007/08 of the Commission, there were already 95% of claims that have been settled as at the 31st March 2008. Out of the total of the outstanding claims that are 4949, the Eastern Cape has 555 outstanding claims which constitutes 11.21% of the total outstanding clams. The claims that are outstanding are referred to as rural land claims that have challenges ranging from competing claims from various communities to others that are awaiting passing of judgement by the Land Claims court and others that are delaying owing to financial constraints (NLCC Annual Report; 2008). It is however unclear whether the definition of „rural' land claims includes the land claims in the small towns of the former Transkei.

7.2. Synthesis of Research findings and recommendations

7.2.1. Restitution of Land Rights in small rural towns

Many of the small towns in the former Bantustan of Transkei are under land claims. Land claims were lodged by either chiefs or individuals or communities in the rural areas on the close to the urban areas. In some cases the chiefs that have lodged claims still have their ancestral graves within the „municipal' land. The case of Flagstaff (eSipaqeni) in the eastern Pondoland is a good example. Chief Ndabankulu's grave is with erf 93 currently owned by the Municipality of Ingquza Hill (the researcher visited the grave accompanied by Chief Dilliza Ndabankulu but pictures were not permitted to be taken). In the case of Mt Frere, Acting Chief Diko indicated that on the north west end of erf 351, the claimed land, there are graves of people whose families were forcibly removed to make way for whites.

Issues of graves of family members and most importantly traditional leaders is an emotive one. It is therefore important to treat it with respect and dignity it deserves as it might result in unnecessary

tensions between the Municipality/government and the institutions of traditional leadership. Whilst the matter of sentimental attachment to land has to be treated with caution, it is also important to strike a balance between the general community needs and those that are directly affected by the restitution process. The other challenge that the restitution process in the context of municipalities that are in small towns is a case where those who led dispossession are no longer in power. The current municipalities are democratically elected institutions that are representing communities including traditional institutions. It therefore is important to ask the following questions:

- How has the unsettled land claim affected the Local Spatial Planning in Mount Frere?
- To what extent has the land claim affected Local Economic Development in Mt. frère?
- What is the role of the Municipality in local spatial planning where there is a land claim?
- How does the capacity of the Municipality affect local spatial planning in Mt. Frere?
- To what extent has the institutional capacity of the Regional Land Claims Commission affected the land claim in Mt. Frere?

This is by no means arguing against restitution of land rights but rather it is a suggestion to strike a balance between restitution of land rights and general community development. The following sections will therefore provide answers to the research questions.

7.2.2. Unsettled Land Claim and Local Spatial Planning

The study area is erf 351 currently owned by Umzimvubu Local Municipality through a donation by former Minister of Land Affairs and Agriculture Derek Hanekom. The Municipality has a responsibility to manage land under its ownership. It is expected that the Municipality would manage land for the benefit of all residents and visitors of Mt Frere. The research also found that 90% of the respondents feel that the town belongs to everyone who visits the town, meaning that the claimants have to be considerate of the function of the town for all people who use the town for services, business and other functions. It is against this view that Umzimvubu Municipality has a responsibility of managing land to the benefit of the population of Mt Frere, Umzimvubu Municipality and those who may be visiting the Municipality or the town.

Whilst there is evidence that there are serious institutional challenges in the Municipality in relation to Spatial Planning, the Municipality is expected to develop, implement and manage Local Spatial Plans. The Local Government Municipal Systems Act 32 of 2000, in section 35(2) directs that a municipality has to develop and implement a Spatial Development Framework as part of the IDP. All the respondents that were interviewed proposed that whilst the land claim may be valid, the Municipality must, however, be allowed to exercise its legislative duty regarding local spatial planning. Even the

Traditional Council Leadership who lodged the claim also suggested that the Municipality has to lead spatial planning even if they were to get restoration as means of restitution. But it also was noticed that 90% of the respondents were complaining about the capacity of the Municipality to develop and manage Local Spatial Planning properly. On the other hand the Municipality argued that the inability to develop and manage a Local Spatial Plan is due to the pending Land Claim.

7.2.3. Finding and conclusion

The investigation found that the pending land claim has had an adverse impact on the ability of the Municipality to develop and manage a Local Spatial Plan. This has been evident from the provisions of the Restitution of Land Rights Act, section 11(7)(aA)(i) which prevents any planning, rezoning or subdivisions of land that is subject of a land claim, particularly when the claim has been gazetted. The contested area of Camp 4, which was allegedly earmarked for light industrial development was invaded for the purpose of establishing an informal settlement. This was an indication of inability of the Municipality manage Local Spatial Plan, this is so regardless of whether or not the Municipality has capacity or not?

7.3. Impact of unsettled Land Claim on Local Economic Development

According to local business and youth leaders, the town of Mt Frere has a lot of potential to develop and be bigger than it is. The local youth leadership also has raised issues with the delayed settling of the land claim as it contributes to unemployment which is affecting the youth. Young people blame weak leadership of council to problems that are experienced in spatial planning (interview, 09-05-2009). Research revealed that youth leaders feel that the area that is part of camp 4 is good for light industrial development. This is the area where the Claimants allegedly sold sites to individuals for building dwellings without the municipal consent for a benefit of an individual not the whole community or Claimants.

The town of Mt Frere remains a linear town (see Map 4) following a major national (N2) road that goes past the town. Businesses are currently not growing due to infrastructure that is laid in a linear fashion. According to business and Taxi industry leaders (interview, 01-05-2009), a lot of investment has been lost over the years owing to the unresolved and unsettled land claim. The lost investment is due to uncertainty of land tenure which is important for investors. Land tenure is uncertain as the claim has not been settled and no one knows how will it be settled. The finding that land claims have a huge impact on local economic development. In fact, in Mount Frere 100% of respondents did acknowledge that the unsettled land claim has a negative influence on Local Economic Development. However, the Claimants blame the Municipality and the Municipality blames the claimants. The immediate quantifiable extent of the land claim impact is the R 40 million investment that was lost in 2003 for the construction of a retail centre and a taxi rank.

7.4. Role of the Municipality in local spatial planning on land that has a claim on it

From the interviews it was clear that there is a capacity challenge on the Municipality in relation to local spatial planning. The incapacity of the Municipality contributed to poor planning of the town. The poor local spatial planning was also complicated by the land claim that was lodged and gazetted. This was confirmed by the absence of the Spatial Development Framework when requested from municipal officials. Currently, the Municipality is part of a programme that is a partnership between DBSA and Department of Provincial and Local Government. The programme is providing capacity building on certain fields that include Town and Regional Planning; there is a planner seconded to the Municipality to build capacity that would also address issues of Local Spatial Planning. However, there has not been any visible improvement in this regard yet; this may be so because of the delays of the land claim settlement as the Senior Estates Officer said they were told by the RLCC officials not to do' anything' in relation to planning until the land claim has been ‚completed'. This suggests that the role of the Municipality has been undermined by the delays of land claim conclusion.

The RLCC as well has serious challenges of incapacity and skills shortage, as at the time of the interviews with the Regional Land Claims Commissioner, there was no town planner in the RLCC. Consequently, there has not been an understanding of the impact of unsettled land claim in spatial planning and the development of the town.

7.5. Lessons learnt for policy proposals and recommendations

The Mt Frere case has revealed some areas for either new policies or reviewal of the current policy frame work in relation to land claims in small towns.

7.5.1. Principles relating to land restitution in small towns and Local Spatial Planning

The research has found that there is little or no consultation between the state institutions and tiers (National, Provincial and Local) of government. This has resulted in a disjointed approach to restitution. It is therefore important for the state to consider the following broad principles on policy formulation and implementation:

- Having analysed the data and interviews, the implementation of provisions of the Restitution of Land Rights Act 22 of 1994, has to be updated to include the spirit of Intergovernmental Relations Framework Act 13 of 2005. This would ensure that the state at all levels has a coordinated response on land restitution cases.
- The research argues that for the local state to function , both national and provincial tiers of government with state entities have to plan with the local state. The IDP has been

created as a platform through which the state can plan together, however there is no directive to ensure that all levels of government support the planning of the local state.

- As proposed by Boyce (2003), it is important to ensure that all stakeholders are consulted and are part of the restitution process for a better understanding and reduction of tensions
- Many of the local municipalities (Ingquza Hill Local Municipality, Mbizana Local Municipality, King Sabatha Dalindyebo Local Municipality) and Umzimvubu Local Municipality have gone to court with the claimants. It is unsustainable to resolve matters in court, therefore it would be appropriate to develop a mechanism to reduce court cases.

7.5.2. Capacity of the state in Local Spatial Planning where there is a land claim

Both the RLCC and the Municipality have capacity problems of attracting and maintaining competent and properly qualified personnel to guide the development, implementation and management of Local Spatial Plans. Noting that local municipalities are faced with a number of challenges, the provincial and national level of government has to assist:

- Each restitution case has to have a planner that is linked to the process so as to ensure that the local state is supported. This recommendation is due to the fact that the current process of Land Claims does not take into account any town planning aspects including the Local Spatial Planning. The Umzimvubu Local Municipality, according to the research, did not manage to recruit and retain a Town Planner. In a period of four years, two planners were recruited but could not stay for more than 18 months. The Regional Land Claims Commissioner, argued that it is important for the RLCC to have town planners internally so as to advise the Commission and claimants on matters of Town Planning during the Restitution process.
- Interviews with RLCC revealed that the RLCC itself is having staff and skill challenges in relation to planning, it is therefore necessary that there must be a support mechanism even if it is an ad hoc support for spatial planning. According to the Commissioner, there were 34% vacancies at the time of interview and mostly it was positions that relate to Town Planning and Survey that were vacant.
- Other mechanisms have to be considered for the law to fast-track the settlement of land claims, more so where there has been evidence of tensions and underdevelopment. In the case of Mount Frere the Land Claim has been going on since 1998 December but there is no commitment from the side of the Commission as to when is the Claim going to be settled. Even worse, land invasion is rampant and there is no Spatial Plan to guide development. Lastly, the number of court cases is evidence of tensions due to land

ownership dispute on the basis of land claim and interpretation of what it means when a land claim has been gazetted.

7.6. *Importance of Local Spatial Planning on Local Economic Development*

The town of Mt Frere is an important high level centre that services rural areas that are within a radius of 40 km. But the infrastructure has not shown any signs of development nor has there been any spatial development that is coordinated and planned. The land claim has, according to 90% of the respondents, contributed negatively in the growth of the town.

- Though land restitution is important and necessary, in cases of urban land claims many communities would be affected including those who are not claimants. Compensation has to be considered as a first priority as opposed to restoration and the municipality has to consider invoking section 34 of the Restitution of Land Rights Act which allows the state to approach the Land Claims Court not consider restoration but to look at other forms of restituion. This must be done in a structured way that will ensure that the claimants benefit on developments on their land over and above compensation. The Municipality has to be allowed space to continue playing its role of planning for development.
- Strategies to accommodate claimants in developments have to be developed so as to ensure that development is continuing whilst restitution is also underway.
- Against the background of allegations of some in the Traditional Leadership abusing their power by illegally selling land, there has to be an agreement to a form of benefit, and management of such benefit by claimants in every development. This has to be done to avoid enrichment of individuals within the claimants at the expense of the whole claimant community.
- The research also revealed that there are weaknesses in communication between the Commission and the Local Municipality. This was evidenced by accusations by the municipality against the Commission staff for failure to consult the Municipality and at times inciting claimants to revolt against the Municipality. A coherent communication and participation plan between the Local Municipality and the Commission has to be developed so as to ensure that the RLCC and the Municipality are at the same level of understanding the process and issues.
- Where it is not possible to opt for compensation for claimants, joint projects of development must be identified by claimants and the Municipality and be prioritised in the IDP.

- Funding of such projects must be open so as to minimise suspicions, however, where the funding is private capital Special Purpose Vehicles have to be put together so as to fast-track development and avoid losing investment
- Local municipalities must be legally allowed to conduct local spatial planning whether a claim has not been settled or not, but consultation has to be conducted thoroughly buy the Municipality and RLCC
- It appears that there is a need for reviewal of policy and legislative framework in relation to competencies and cooperation of government spheres where there is a land claim

The above policy proposals and recommendations are from the analysis of the issues that emerged during the interviews with various stakeholders in the Municipality. Some of the views are influenced by a personal experience of the researcher in the study area over a period of six years from 2002 to 2007 working for the Municipality responsible for land use administration amongst other responsibilities. It has been demonstrated that a delay in settlement of the land claim in Mt Frere has contributed in the poor local spatial planning. On analysing the SDF of the Municipality it was evident that it was weak as discussed in the previous chapter. The land invasion that was allegedly led by the land claimants is a typical example that the delay has had a negative impact. It is also clear that there was a very poor communication between the claimants and the Municipality over a long period. The claim has seen three different mayors come and go without the matter being resolved.

There are accusations of interests that are also complicating the situation. Council officials and business persons are suspected of serving sectarian interests. The study also revealed that 75% have the Traditional Council or individuals who are members of the Traditional Council of selling land illegally to benefit unfairly. The accusations are an indication that there is a need to improve the policy and legislative framework so as to guide all parties involved or affected by a land claim. areas of improvement in the Policy and legislative framework have to focus on the speed at which claims are handled and settled and how disputes have to be handled.

Boyce (2003), identified some key policy issues that have to be considered as part of resolving urban land claims. The following are the issues that are relevant for the case of Mt Frere and other similar municipalities:

I. Land owned by the Municipality
II. Role of municipalities with regards to restitution

7.7. Conclusion

One glaring issue is lack of capacity in both RLCC and the Municipality with regards to spatial planning. It therefore becomes necessary that addition financial and human resources be deployed at the local state for a more effective and efficient spatial planning. As required by the Local Government Municipal Systems Act 32 of 2000, that a Municipality must develop a SDF, this can be achieved if municipalities are given capacity in terms of the legislation, policy, funding and human resources. There is a need to find synergy in the policy and legislation that relates both to Local Spatial Planning and Restitution of Land Rights in small towns. The issue of relationship between the claimants and the local Municipality will stretch beyond the settlement of the land claim hence it is important to look at policy options to ensure cordial coexistence between the beneficiaries of the restitution programme and the local state. It was noted that there were different ordinance laws in the Eastern Cape; it is therefore important to update the ordinance legislative framework.

As evident from the results of the research, Local Economic Development is directly affected by the land claim. The government and policy makers have to find a way of strengthening and developing policy instruments to enhance local economic development in cases where there are unresolved land claims. There is also a need to clarify the role of a municipality in cases where there are land claims because the current legislation makes no indication of the role of the municipality.

Both the Regional Land Claims Commission and the Municipality demonstrated a huge lack of technical capacity to develop and manage local spatial plans. This was affected by the inability to recruit and maintain skilled personnel in the planning department. A strategy to recruit and maintain skilled personnel has to be developed by national department of local government.

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